17-466

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 108.

JOSEPH B. CLOSE AND GEORGE CLÆNDENIN, APPELLANTS,

vs.

THE GLENWOOD CEMETERY.

FILED OCTOBER 18, 1879.

No. 832.

CHARLES BORCHERLING, APPELLANT,

vs.

THE GLENWOOD CEMETERY.

FILED MAY 6, 1882.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 In the supreme court District of Columbia, sitting as a court of equity.

THE GLENWOOD CEMETERY
vs.
JOSEPH B. CLOSE, WILLIAM S. HUMPHREYS, Frederick N. Close, and R. S. Evans, and George Clendenin.

Original bill.—Filed Oct. 25, 1877.

The Glenwood Cemetery (a body politic and corporate of the District of Columbia, under and by virtue of an act of incorporation) comes, by its board of trustees, and exhibits this its bill of complaint against Joseph B. Close and Frederick N. Close, residents of the State of New Jersey, and William S. Humphreys and R. S. Evans, residents of the State of New York, and George Clendening, a resident in said District of Columbia (each of whom the plaintiff prays to be made party defendants hereto), and shows here to the court as follows:

First. That prior to July, 1854, the defendants Joseph B. Close, William S. Humphreys, R. S. Evans, and George Clendenin, then residing in the vicinity of New York City, by combination and confederation, and for their own private gain and speculation, undertook to establish, and did establish, a cemetery as a public institution for the burial of the dead of the people of the city of Washington and District of Columbia, at or near said city. And for that purpose the tract of land hereinafter described was purchased for a valuable consideration, and the title thereto was temporarily conveyed to said William S. Humphreys. And, in order to carry out said undertaking, said Close, Humphreys, Evans, and

2 Clendenin procured the passage of an act of incorporation by Congress, which is entitled "An act to incorporate the proprietors of Glenwood Cemetery," passed July 27, 1854, a copy of which enactment is hereto attached and made a part of this bill, and contained on pages 13, 14, 15, and 16 of the pamphlet, made Exhibit A, and herewith submitted.

The first section of said act of incorporation contains the names of twelve persons as corporators, without giving their places of residence; but the fact is that the first eight named were residents of the District of Columbia, and the last four named were residents of the vicinity of New York City. Said first section also confers the necessary corporate powers and authority on the company to enable it to accomplish the purposes of a cemetery corporation, including the power to purchase and hold real estate in the District of Columbia.

The second section of the act provides that the affairs of the company shall be managed by a president and three managers, to be elected annually by the proprietors, with power to fill vacancies in their own body.

The sixth section provides that, till an election should be held under the provisions of the act, the four last-named persons in section 1 should be the managers of said corporation. And the said four last-named persons were the defendants Joseph B. Close, William S. Humphreys, and R. S. Evans, together with one William Phelps (now deceased), all of

whom resided out of the District of Columbia and in the vicinity of New York City. It was further provided that the capital stock of said company should consist of two thousand shares of fifty dollars each, to be divided among the proprietors according to their respective interests, transferable as the by-laws might direct.

And it was provided in section 9 that a certificate, under the seal of the corporation, of the ownership of any lot in said cemetery should have in all respects the same effect as any conveyance from said corporation of said lot would have if executed, acknowledged, and recorded as conveyances of real estate are required to be.

Second. And the plaintiff further says that the said eight persons first named as corporators in said section 1 were made mere nominal corporators, and being citizens of the District of Columbia, were used for the mere purpose of enabling the said four non-residents of the District to obtain the said act of incorporation, and none of the said eight
3 first-named corporators were ever called upon or allowed to aid in the organization of the company, and none of them have ever been allowed to take any interest or part whatsoever in either its organization or its management; but having secured the charter, the said four last-named corporators—Close, Humphreys, Phelps, and Evans—availing themselves of the said sixth section, which was specially inserted for that purpose, organized themselves as the proprietors under the said act, accepted the charter, and elected the said Joseph B. Close as the president and the said William S. Humphreys, William Phelps, and R. S. Evans as managers; and the board of managers thus organized appointed the defendant George Clendenin as superintendent, &c., and proceeded to manage the *manage the* affairs of the said cemetery corporation under the authority of said act of incorporation, but for their own private gain and speculation, and have so continued to manage the same hitherto, the said president and managers residing in the vicinity of the city of New York, and giving the cemetery no personal attention whatsoever, but conducting and managing the same solely through the agency of the defendant George Clendenin, who was sent here from New York by them for that purpose.

Third. The land purchased as aforesaid for the site, location, and grounds of the said cemetery is situated in the District of Columbia, about a mile and a half north of the Capitol, in the direction of North Capitol street, and particularly known and described as follows, to wit: One part of it containing seventy-five and a quarter acres, known as Powell's Dividend, and the other part of it containing about or near ten acres, adjacent to the first-mentioned tract, both of which tracts, with the parts taken therefrom for the purposes of a highway, were supposed to contain about ninety acres, more or less, the same being the entire tract of land and grounds of Glenwood Cemetery, and more particularly described in the deed of James S. Boyle and wife to William S. Humphreys, dated .

Fourth. Plaintiff also further shows that after the charter had been obtained from Congress, in July, 1854, as aforesaid, and the organization of the corporation had been effected under it, to wit, on the first day of August, 1854, the said land and grounds, consisting of the whole tract aforesaid, estimated at about ninety acres, were actually dedicated to the purpose of said cemetery, and the said dedication publicly declared as having been made under the said act of incorporation, and for the purposes

4 and appropriation aforesaid. And on the next day, to wit, on the second day of August, 1854, the ceremony of the said dedication took place and was publicly announced and consecrated by extended religious ceremonies, as is set out and shown in Exhibit A, between pages 16 and 32 of the same. All this was done by the original proprietors of said Glenwood Cemetery, under the direction and management of the said Joseph B. Close, Phelps, Humphreys, and Evans as the board of managers of said corporation. And acting in their corporate capacity the said board of managers prescribed rules and regulations for said cemetery under said act of incorporation and published the same to the world, together with said charter and the fact of said dedication, and also the said entire religious ceremony of the consecration of the said dedication, as contained and set forth in the said pamphlets hereto attached and marked Exhibit A, and made part hereof.

Fifth. That after the dedication of the said land and grounds to the public purposes of said cemetery as aforesaid, the defendant Humphreys, who had temporarily held the legal title to the premises in trust for the purposes aforesaid, conveyed the same in due form to the defendant Joseph B. Close, who had been previously elected the president of the said cemetery corporation. And the plaintiff avers that by virtue of said dedication the said cemetery company became the actual owner of said premises and cemetery grounds, and was in the possession thereof as such; and that the defendant Joseph B. Close was invested with and duly held the legal title to the said land and premises in trust for the said cemetery corporation until the 10th day of March, 1877, when he attempted surreptitiously and fraudulently to convey the same away to his own son, as hereafter set forth.

The said defendants Joseph B. Close, Humphreys, Evans, and Clendenin, publicly professing and holding out to the world that the said cemetery was incorporated and conducted and managed under said act of incorporation granted by Congress, have sold to and received money from numerous persons, to wit, over twelve hundred persons. And the certificates of the conveyances to the lot purchasers were duly executed under the corporate seal of said company by said Joseph B. Close, as the president of the corporation, in the form shown in Exhibit 8, hereto attached and made a part of this bill. And by the authority of the

5 said defendants as managers of said cemetery corporation the said ninety acres, or entire tract of ground, were reported to the tax assessors of the District of Columbia as dedicated to the purposes of the said cemetery corporation, and thereby have been held continuously exempted from taxation heretofore. Induced by the said professions and pretensions of the said managers and superintendent large numbers of citizens of the District of Columbia have purchased lots in said cemetery and paid large sums of money to the company therefor; and also, under said inducements, have buried many of their deceased friends and members of their families therein, and have expended large amounts of money in ornamenting and improving the grounds and lots used for such burial purposes.

Sixth. The plaintiff also shows that the place of the residences of the managers of the cemetery, abroad and at a distance from the District of Columbia, were not made publicly or generally known to the people of the District, and many persons purchased lots and buried deceased members

of their families in the said cemetery, from the consideration that it was an incorporated company of said District, and thereby presumed to be managed by persons interested in it as a place of burial and resting place for their own deceased friends. But, as might be expected from the managers of the cemetery for mere gain and private speculation by non-residents unknown to the lot owners, the affairs of the institution were conducted in a way very unsatisfactory to the latter. Petty peculations and extortions upon the lot owners were practiced, improvements of lots were interfered with by the unwarranted demands of the superintendent, and when ornamental flowers and shrubs were planted on the graves of the dead they were frequently cut down because the superintendent or his assistants were not paid for taking care of them. On ascertaining the course of the managers and the treatment of the lot owners by the superintendent, numerous lot owners abandoned their lots and removed the remains of their friends to other cemeteries. But Congress having reserved the power by the twelfth section of the charter "to alter, modify, or repeal" the act of incorporation, which was an inherent condition in the terms and form of its government, as well as in all investments and dedications made for its benefit and purposes, the lot owners made application to Congress for an amendment of the charter; whereupon Congress passed the amendatory act, a copy of which is hereto attached marked Exhibit B, and which became a law in the month of February, A. D, 1877.

6 Seventh. That shortly after said amendatory act was passed, to wit, on the 10th day of March, 1877, for the mere nominal consideration of one dollar, the said Joseph B. Close, contriving and intending to defraud and cheat the said cemetery corporation and the lot owners in the cemetery, and in violation of the trust reposed in him as aforesaid, conveyed the legal title to the said premises and cemetery grounds to his son, the said Frederick N. Close, who took the same, with full notice of the rights of all parties concerned.

Eighth. That early in the month of March, 1877, the lot proprietors in said cemetery held a special meeting, in accordance with the provisions of the seventh section of said amendatory act, and duly elected S. T. G. Morsell, John McLelland, and T. W. Bartley as a board of trustees, to act until the annual meeting of the lot proprietors, and until their successors should be elected and qualified. The said three trustees so elected were duly qualified and entered upon the discharge of their duties. And afterwards, on the 9th of March, 1877, said board notified said Joseph B. Close, who had been up to that time acting as the president of said company, of their election, and requested the original proprietor to elect two trustees to represent them in said board. In reply to this notice and request, the said Joseph B. Close sent to the board his communication of the 11th of March, 1877, a copy of which is hereto attached as Exhibit C and made a part of this bill, in which he falsely and fraudulently denies the existence of the said corporation and any organization under the charter, and claims the cemetery grounds and land aforesaid to be private property, &c.

Ninth. Afterwards, on the 11th of March, 1877, the said board of trustees duly demanded the possession of the said cemetery premises and grounds and other property, and from the defendant, George Clendenin, acting as superintendent thereof as aforesaid. But he refused to surrender and give up possession thereof to said trustees, upon the alleged ground,

stated by him, that the said cemetery grounds and other property, &c., were private property, and did not belong to the cemetery corporation, and that the charter was not accepted, and no organization ever made under it.

Tenth. The plaintiff further shows that, pursuant to the provisions of the said charter as amended, the annual meeting was duly held by
7 the lot proprietors of said cemetery on the first Monday of June, A. D. 1877, for the election of three trustees, authorized by the said amendment of the charter, at which meeting T. W. Bartley, John McLelland, and George W. Cochrane were duly elected trustees of said cemetery company, and they were therefore duly qualified as such. Notice of this election of trustees by the lot proprietors was duly given to the original proprietors, with the request to elect or appoint the two additional trustees, according to the provision of the law. But, on their omitting or neglecting to do so for the time being, the said trustees elected by the lot proprietors filled the vacancies by appointing Lewis Clephane and George T. Keen trustees temporarily, as provided by law. Afterwards, the said board of trustees having been duly organized, to wit, on the 30th of June, 1877, removed the defendant Clendenin from the office of superintendent of said cemetery and appointed his successor, of which fact the said Clendenin was therefore duly notified; whereupon the said board of trustees made in due form actual demand for the possession of said cemetery, with the grounds, property, and books and papers thereof, from the said Clendenin; but he refused to surrender and give possession of the same to the said trustees, and still refuses so to do, but continues to retain the possession thereof, in violation and defiance of the law; wherefore the plaintiff avers that the legally constituted board of trustees of said cemetery has been, and is now, wrongfully obstructed by the defendants as aforesaid in the exercise of their authority, and prevented from taking the possession and control of said premises and cemetery grounds, &c., and otherwise hindered in the discharge and exercise of their corporate functions and duties.

Eleventh. The plaintiff also shows that the said defendants, since the amendment of the charter of said company, have wrongfully and fraudulently repudiated the said corporate franchises and organization under the charter; and also have wrongfully diverted the said cemetery grounds and property from the uses and control of said corporation, and surreptitiously appropriated the same to their own private uses and purposes. And, further, that the said defendants have received large amounts of money from the sale of lots in said cemetery, and from other sources, belonging to the plaintiff, which they have diverted from the uses and purposes of the corporation, and appropriated wrongfully to their own private uses, since the reorganization of the company under the amendment of
8 its charter, which should have been paid over to the plaintiff and its legally constituted trustees. And plaintiff avers that an income is daily and continuously arising from the sales of lots in said cemetery, and other sources, which belongs to the plaintiff, and which the defendants are wrongfully and fraudulently converting to their own private use, to the neglect and injury of the cemetery grounds and company.

Twelfth. That if the claim and statement aforesaid set up by the defendants since the amendment of the charter of the company be true, then they have been, and are, guilty of a stupendous fraud, and a conspiracy

to commit a fraud, whereby they have deceived and imposed upon a whole community, and obtained large amounts of money from the lot proprietors upon false pretenses and artifices, for which they are liable to punishment under the criminal laws of the District of Columbia. Here, in a court of equity, plaintiff avers that the defendants are estopped to set up their own fraud and criminality to screen themselves from responsibility, and perpetuate their manifest wrongs against not only their own corporate body, but also an outraged community.

Thirteenth. In consideration whereof, and inasmuch as the plaintiff is remediless in the premises by the strict rules of the common law, and can obtain redress properly in a court of equity only, the plaintiff prays for relief as follows, to wit:

1st. That the conveyances of the premises and cemetery grounds made by the said Joseph B. Close to his son, Frederick N. Close, as aforesaid, be set aside as null and void; and, further, that the said Joseph B. Close be compelled to execute the said trust, which he has abused as aforesaid, by conveying the legal title to the premises and cemetery grounds aforesaid to the plaintiff, The Glenwood Cemetery Company.

2d. That the defendants be compelled to account for all moneys received by them, or any one of them, from the sales of lots in said cemetery, and other sources, belonging to the plaintiff, since the reorganization of the company under the amended charter aforesaid.

3d. That the said defendants, and each and every one of them, be enjoined and restrained by an injunction from obstructing and interfering with the lawful and rightful possession of the said premises and cemetery grounds by the legally constituted board of trustees aforesaid, in the lawful discharge of their corporate duties, and the proper exercise of their powers under the law.

9 4th. The plaintiff further prays for the appointment of a receiver in the premises, if necessary, and also for such other, further, and different relief in the premises as equity and good conscience may require, &c.

5th. And that upon the filing of this bill of complaint, the court make an order that the said defendants, each and every one of them, their servants, officers, and agents, be restrained and enjoined from all obstructions and interference with the possession, management, and control of said cemetery grounds, property, &c., of said company, through its lawfully constituted authorities aforesaid, until the further order of the court. Plaintiff also asks for an immediate restraining order, &c.

6th. That the United States writ of subpœna issue out of this honorable court to the defendants, Joseph B. Close, William S. Humphreys, R. S. Evans, George Clendenin, and Frederick N. Close, directing and commanding them to appear and answer the exigencies of this bill, &c.

10 T. W. BARTLEY,
JOHN McLELLAND AND
GEORGE W. COCHRANE,
Trustees.
By T. W. BARTLEY,
President, &c.

A. G. RIDDLE, and
T. W. BARTLEY & F. J. MILLER,
Attorneys for Plaintiff.

DISTRICT OF COLUMBIA, *ss:*

I, T. W. Bartley, do solemnly swear that I have read the bill by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

T. W. BARTLEY.

Sworn to before me this 25th of October, 1877.

R. J. MEIGS, *Clerk, &c.*
By M. A. CLANCEY,
Ass't Clerk, &c.

11 Ex. A.

GLENWOOD CEMETERY, 1854.

12 *Rules and regulations of the Glenwood Cemetery, and the act of incorporation.*

Washington, D. C., 1854.

13 Glenwood Cemetery is situated north of the Capitol, 1 mile from the City Hall.

MANAGERS.—J. B. Close, Wm. Phelps, Wm. S. Humphreys, R. S. Evans.

J. B. Close, president; Wm. S. Humphreys, treasurer; G. D. Humphreys, secretary; G. Clendenin, superintendent; Geo. F. de la Roche, engineer; John McGuire, keeper of the gate.

14 CHARTER.

An act to incorporate the proprietors of the Glenwood Cemetery.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Charles B. Calvert, George Parker, William B. Todd, James C. McGuire, William A. Bradley, Charles S. Wallach, Abner Miller, William Banks, Joseph B. Close, William Phelps, William S. Humphreys, Randolph S. Evans, and their successors, be and they are hereby created a body politic and corporate, by the name and title of the proprietors of the "Glenwood Cemetery, in the District of Columbia," and by that name shall have perpetual succession, and shall be able and liable to sue and be sued in any court of law and equity; may have and use a common seal, and shall have power to purchase and hold not exceeding one hundred acres of land in the District of Columbia, north of the limits of the city of Washington, to sell and dispose of such parts of said land as may not be wanted for the purpose of a cemetery: Provided, That at least thirty contiguous acres shall be forever appropriated and set apart as a cemetery, with authority to said corporation to receive gifts and bequests for the purpose of ornamenting and improving said cemetery, and to hold such personal property as may be requisite to carry out the object of this act.

SEC. 2. And be it further enacted, That the affairs of the said
15 corporation shall be conducted by a president and three managers, who shall be elected annually by a majority of the votes of the proprietors; the said president and managers to fill all vacancies in their own body, and shall have power to lay out and ornament the grounds, remove and alter old buildings and erect new ones, to lay out and sell or dispose of burial lots, to appoint all necessary officers and agents and fix their several duties and compensation, and to make such by-laws, rules, and regulations as they may deem proper for conducting the affairs of the corporation, for the government of lot holders and visitors to the cemetery, and for the transfer of stock and the evidence thereof. In all elections held under this act each proprietor shall be entitled to one vote for each share held by him or her.

SEC. 3. And be it further enacted, That the capital stock of said company shall be represented by two thousand shares, of fifty dollars each, divided among the proprietors according to their respective interests, and transferable in such manner as the by-laws may direct.

SEC. 4. And be it further enacted, That no streets, lanes, alleys, roads, or canals of any sort, shall be opened through the property of said corporation exclusively used and appropriated to the purpose of a cemetery: Provided, That nothing herein contained shall authorize said corporation to obstruct any public road, or street, or lane, or alley now actually opened and used as such.

SEC. 5. And be it further enacted, That any person who shall wilfully destroy, mutilate, deface, injure, or remove any tomb, monument, gravestone, or other structure placed in said cemetery, or any fence, railing, or work for protection or ornament of said cemetery, or any tomb, monument, gravestone, or other structure thereon, or shall wilfully destroy, cut, break, or remove any tree, shrub, or plant within the limits of said cemetery, shall be considered guilty of a misdemeanor, and on conviction thereof before any justice of the peace of the county of Washington, shall be
16 punished by fine, at the discretion of the justice, according to the aggravation of the offence, of not less than five nor more than fifty dollars.

SEC. 6. And be it further enacted, That until an election shall be held under the provisions of this act, the four last-named persons in section first shall be the managers of said corporation.

SEC. 7. And be it further enacted, That burial lots in said cemetery shall not be subject to the debts of the stockholders thereof, and the land of the company dedicated to the purposes of a cemetery shall not be subject to taxation of any kind.

SEC. 8. And be it further enacted, That the said corporation shall provide for the return from time to time to the corporation of Washington reports of all interments made in said cemetery of persons who may have died within the limits of the said corporation of Washington in such manner and according to such forms as may be prescribed from time to time by the corporation of Washington.

SEC. 9. And be it further enacted, That a certificate, under seal of the corporation, of the ownership of any lot aforesaid, shall in all respects have the same effects as any conveyance from said corporation of said lots would have, if executed, acknowledged, and recorded as conveyances of real estate are required to be.

SEC. 10. And be it further enacted, That nothing in this act shall be so construed as to authorize the said corporation to issue any note, token, device, scrip, or other evidence of debt, to be used as currency.

SEC. 11. And be it further enacted, That this act shall take effect from the passage thereof.

SEC. 12. And be it further enacted, That it may be lawful for Congress hereafter to alter, modify, or repeal the foregoing act.

17 SEC. 13. And be it further enacted, That each of the stockholders in the said company shall be held liable in his or her individual capacity for all the debts and liabilities of the said company, however contracted or incurred, to be recovered by suit as other debts or liabilities before the court or tribunal having jurisdiction of the case.

Approved July 27, 1854.

18 Sketch and dedication of Glenwood Cemetery, Washington, D. C., August 1st, 1854. Address by the Rev. Doct. Butler. Poem by the Rev. Byron Sunderland. Prayer by the Rev. Doct. Dashiel. Hymn by F. Crosby, esq.

19 *Dedication.*

On Wednesday, August 2, this interesting ceremony was performed on the ground of the cemetery, situated a mile and a half north of the Capital. A handsome lodge or gate-house, of the Grecian order, has been built by George Clendenin, the present superintendent of the place. It has a beautiful front, with figures of Time, Penitence, and Love. A mosaic mausoleum has been erected by Mr. Maxwell, of New York, similar to that in the celebrated Greenwood Cemetery, of New York. There are about four miles of gravelled serpentine walks, running in circles, angles, &c. The premises altogether comprise ninety acres, thirty of which are now fully prepared for interments. The company are proud to acknowledge that the superior skill and beauty apparent in laying out the avenues and grounds belong exclusively to the celebrated engineer, Capt. George de la Roche. The whole is in fine order, and surrounded by a deep wood, giving it a rural, quiet, and secluded character. This, then, is the beautiful place selected for the sacred purposes intended—the repose of the immortal dead.

A stand was prepared for the ceremonies in a shady and pleasant portion of the grounds, which was occupied by a large number of ladies and those engaged in the dedication.

About 5 p. m. the Rev. Dr. Butler, of the Protestant Episcopal Church, commenced the ceremonies by introducing the Rev. Wm. Haskell, who read the first two and from the 29th to the 33d verses of the 49th chapter of Genesis, which will be seen to be quite appropriate to the occasion.

The Rev. Wm. Dashiel, of M. E. Church, then delivered the following impressive prayer:

20 O Lord God, King of kings and Lord of lords! Eternity is Thy dwelling-place, the universe is Thy possession! Before Thy glorious presence we present ourselves, and worship Thee: "For Thou art worthy, O Lord, to receive glory and honor, and power: for Thou hast created all things, and for Thy pleasure they are and were created." We

are awed by the solemnity and glory of Thy presence; and we dare not approach Thee save in the name of Jesus Christ, our mediator, by whose unfailing intercessions and merits we are sustained here, and hope to be accepted hereafter. Have mercy upon us, O merciful God, and forgive us all our sins.

By the occasion which has assembled us together, and by the place from which our devotions now ascend to Thee, we are reminded of that unchanged and unchangeable decree: "It is appointed unto man once to die." Nature around us, passing regularly and solemnly from the new and freshened life of spring into the blush and maturity of summer and autumn, and thence to the cold and cheerless slumber of winter, proclaims, in her faded garniture and sluggish, frozen streams, the type of that earnest truth—we must die. And if we pass from the symbolism of the outward world to our own homes and hearts, experience so sadly repeats to us the mournful lesson. And though from Thy exhaustless love and divine munificence Thou hast made ample provision to relieve us from the disastrous consequences of the fall, yet this terrible effect of sin—temporal death—still hangs over our heads, and must still remain to remind us of our past iniquities, until the triumph of Thy great Son, our Redeemer, shall be completed in the destruction of the last enemy—Death.

This day, O God, our Father! as did Thy servant, the Patriarch Abraham, we set apart and consecrate a resting-place for these frail bodies, when the toil and trials of life are done. Assured that the sleep of the tomb is not an eternal slumber; and yielding to that earnest and universal instinct of the heart that after death our bodies shall sleep well, and be undisturbed by the march of improvement or the vandal spirit of change—in Thy name and in Thy fear, O Lord! we consecrate these beautiful grounds for the repose of our dead. And as here age, decrepid and pressed 'neath the burden of years, shall "halt feebly to the tomb;" as here manhood, arrested in the pride of its strength and vigor, and in the midst of its splendid schemes, shall let go its hold on power and place, and sink to the quiet and inaction of the grave; and here youth, in all the freshness and sparkle of life's morning journey, shall soon—and oh! too soon—come with the
21 bloom faded from its cheeks, and the music of its heart hushed in the chill-silent grave. And here, the infant "tarrying but a night," yet long enough to stir the depths of maternal love, shall 'scape from life's cares to its little flowery bed. Since this is our inexorable destiny, oh God, grant, we beseech Thee, that all who shall find a friendly resting-place beneath this greensward and these beautiful trees, may sleep in Jesus, and have a part in the first resurrection. And grant that from these sacred and solemn associations we may each return to our homes to meet life's earnest work, and do it well; that dying, we may find for our souls a far more beautiful rest than this, and leave, in the hearts and memories of our friends and countrymen, a more enduring monument than the skill of the sculptor or the affection of loved ones shall place over our bodies here.

Waiting in faith till each of us shall enter the gates of this city of the dead, to return no more to the cares and griefs of life, we commend us, soul and body, to Thy mercy and grace, through Jesus Christ, our Lord. Amen.

22 *Address by the Rev. Dr. Butler.*

It is fit that a burial place should be set apart to its sacred use with religious services. It is for this purpose that we are here.

This fair site has been selected for a cemetery, and thus far prepared for its purpose by the enterprize of a single individual, after the design and by the aid of the accomplished engineer, who had already signalized his taste in the picturesque cemetery of "Oak Hill," in the neighbouring city of Georgetown.* Thirty enclosed acres of this home for the dead are now ready to receive their pale tenants. Sixty acres more to be devoted to the same purpose when occasion shall require, which are still more varied and beautiful than those which have been prepared, stretch beyond the enclosure. In this breezy eminence, these scattered groups of trees, these winding roads, these gracefully varied slopes, these sacred cedars, yon massive and solemn mausoleum, you already trace the work of the hand of taste, made reverent by the sacred object in which it has been employed. When time shall have completed the original design, and these avenues become more solemnized with shade, and the gentle slopes be occupied with tasteful monuments, deepened verdure, clustering vines, and blooming flowers; and the abrupt declivites be pierced with tombs; and from the more conspicuous elevations stately monuments shall be seen rising from the midst of shrubbery and trees, and the whole scene shall combine the attraction of a forest and a garden, then will beauty minister tenderly to sorrow, and the sweet influences of the scene soothe those wounded hearts which Heaven alone can heal.

A reverent regard for the dead is a natural and universal feeling of the human heart. It may exist without belief in the resurrection of the body, or the immortality of the soul. That which has been the abode of a mind and heart—that which has been the unseen soul's visible agent and interpreter—that which has expressed the rich affections of a heart, which has passed away forever from the sphere of being—cannot carelessly be consigned to earth as if it were common clay.

23 This natural sentiment of reverence and affection for the soul's tenement has been increased among heathen nations by various superstitions. The Greeks and Romans believed that the ghosts of the departed were denied access to the Elysian Fields, and roamed, restless and unhappy, around the scene of their former life, so long as their bodies were left without the rites of sepulture. The Egyptians believed that the spirits of the departed, after many transmigrations through thousands of years, would return, and repossess their earthly bodies. Hence the importance which the former attached to the rites of burial; and the care with which the latter embalmed the bodies which were again to be the abodes of souls.

The mode of sepulture which prevailed among those who had but vague views of a future for the soul, and no idea of the body's resurrection, or of its reunion with the departed spirit again on earth, was such as significantly expressed their sentiments and feelings. It was usual to burn the body, and gather the ashes in an urn, and place it in a strong and costly sepulchre. They would gather up and cherish all that could be preserved of what was once so precious, with its wealth of life and love. By purifying fire, they would disengage from the body, as they supposed, its grosser

* Capt. Geo. de la Roche.

elements, and retain its most precious residuum, and preserve it in a form incapable of decay or change, and enclose it in a graceful vase, and enshrine it in a sepulchre of rock. They cherished it as a sacred relic of the past, which could never again be restored to life. It was wholly for what it had been, and not, in any degree, from what it was supposed that it would again become, that it was cherished with reverence and affection.

The custom among refined heathen nations of performing the rites of sepulture by night, was also significant of their feelings in reference to death and the dead. It was expressive of their conviction that "the last of earth" is the last of the body's life; and it symbolized that hopeless sorrow which, shunning the light of day and the eye of man, seeks the gloom of darkness and of solitude. The Emperor Julian forbade funerals to be celebrated in the day time—a custom copied from Christianity which had somewhat enroached on that of earlier paganism—because those who witnessed it would be polluted; and the joy's of the living would be shadowed by the presence of the dead, and the grief of the bereaved would be offended by the brightness of the day and the distracting noise of crowds.

We see, then, that the heathen feeling of reverence for the departed spirit's tenement, was one which looked backward and not forward. It was sorrow, clasping with desperate tenacity, in the wild anguish of bereavement, all that remained of the past; and finding for beauty, 24 ashes—for the oil of joy, mourning—and for the garments of praise, the spirit of heaviness. It was woe which a belief in inexorable fate petrified into despair. They who bent over the cold ashes of the departed felt that the death of friends was to them a hopeless loss; and that their own approaching doom was invested with appalling doubts and fear which whispered on pallid lips:

> Ay, but to die, and go we know not where;
> To lie in cold obstruction and to rot;
> This sensible warm motion to become
> A kneaded clod: and the delighted spirit
> To ba he in fiery floods, or to reside
> In thrilling regions of the thick-ribbed ice;
> To be imprisoned in the viewless winds,
> And blown with restless violence round about
> The pendent world; or to be worse than worst
> Of those that lawless and uncertain thoughts
> Imagine howling! 'Tis too horrible!
> The weariest and most loathed worldly life
> That age, ache, penury, and imprisonment
> Can lay on nature, is a paradise
> To what we fear of death.

Far different from these are the feelings which Christianity inspires, and the rights of burial to which it has given rise. To the natural sentiment of reverence for the body, because it has enshrined a soul, it adds a more solemn regard for it as that which has been the temple of the living God, and is to be the home of a glorious and immortal spirit. It does not regard the connection of the soul with the body as terminated by death. It does not consider the earthly tenement of the soul as but one of a multitude of temporary abodes, which, in its ceaseless transmigrations, it has for a brief space occupied, and then forever deserted. The body is to be the soul's glorious and eternal home when "this corruptible shall have put on incorruption, and this mortal shall have put on immortality." It is to be a spiritual and glorified body, the fit home and the ready minister of a

blessed and glorified spirit. Hence the human body is regarded not only with tender human affection for what it has been, but with solemn and religious interest for what it is to be. Its corruption is but as the decomposition which the planted seed undergoes when it prepares to come forth in new and ampler life. In the view of Christianity, the bodies of the departed sink into a trance, and await the hour when, awakened by the resurrection trump, they shall start up from the earth glorified, and be
25 joined by their then happy and privileged spirits. Such bodies cannot be regarded as are the common clods of earth, or as the temporary animal organisms which, after a brief earthly life, are resolved into their original elements. We speak in solemn whispers, we tread softly, we wear a reverent air in the presence of the dead. We treat them as if they were not dead, but sleeping. We speak of them as those that "enter into peace" and "rest in their beds." We place them gently and tenderly in the ground, and call the place of their rest cemeteries, dormitories, or chambers of peaceful sleep.

It was the sublime truth of the resurrection which wrought a change in the mode of burial. Christians abhorred the custom of burning the bodies of the dead, and introduced the practice of committing them to the ground. They did not seek, in the unavailing anguish of affection and despair, to snatch a portion of the body from decay, but reverently placed it in the earth in the faith that Christ imparted to it a principle of resurrection and immortality. They did not glide under the shadow of the night to celebrate cheerless obsequies in vaulted sepulchres, whose gloom was made murkier by flickering and smoking torches; but, in the open day, and under the smiling heaven, they consigned their loved ones to the earth, singing the sublime anthems of Christian faith and hope, and whose burden was, "Blessed are the dead who die in the Lord."

Though often compelled from persecution and for security to bury their dead in gloomy catecombs and beneath crypts of churches, yet was inhumation the first practice of Christians and the spontaneous result of Christianity.

It is altogether in harmony with the spirit of Christianity that the place of burial should be in the midst of withdrawn and rural scenes, apart from the noise of towns, and fitted by their quietude and soothing beauty to attune the mind to sacred and tranquil meditation. Some pious persons have doubted the beneficial influence of these beautiful homes which modern taste and feeling have furnished for the dead. They seem to suppose that death is robbed of its salutary terrors when the couch of the sleeper is placed in the midst of flowers and greeted with the songs of birds, and when there are stationed all around him, as if to guard his tranquil slumber and hail his glad waking, the spirits of beauty and of peace. It is feared that the effect of such scenes may be to induce a forgetfulness of the moral and religious conditions, which are needful, in order that the sleep of the dead may be truly peaceful, and that the body may rest in hope.

It is supposed that the soothing sensations which, in such tasteful
26 landscapes, creep over the body, and the sense of the beautiful which fills the winds, and the sweetly mournful memories and affections, which the little hillocks and the tasteful monuments, and the tender epitaphs, and the touching emblems of mortality and sorrow awaken, may induce the impression that death, however a fit preparation for it

may have been made or neglected, is, in itself and of necessity a condition of peaceful rest. No doubt there are those in Christian communities who so little comprehend the conditions on which alone death is blessedness, that they may be led to feel, of all who rest in such tranquil scenes, that however mad may have been their career on earth, yet "after life's fitful fever, they sleep well." Still it may well be doubted whether such persons would receive more salutary impressions from burial places, where all the ghastly honor of the charnel-house were displayed. A Christian burial place should be adapted, like a Christian church and Christian services, to a true Christian sentiment and feeling. If it correspond to the principles and feelings, and is salutary to the heart of a true child of God, then it is what it should be, notwithstanding the perversion of its true intent on the part of those who, in the midst of Christianity, are ignorant of its power. They may invest the teaching of the tomb, as they do those of the scriptures, to their own destruction.

As the Gospel, then, dispels the doubts and gloom which gather about the soul's future, and transforms the dread charnal-house into a laboratory, whence forms of immortal power and beauty are evolved, it is right that the place of the Christian's burial should symbolize and express these glad tidings. The beautiful and the grand in nature should be combined in the place where the believer sleeps, to cheer and elevate the mourner's heart when "he goeth unto the grave to weep there." The peaceful resting-place of the departed Christian should be made to repeat to the eye the blessed promise that "he shall lie down in green pastures and beside the still waters." It should present in its shaded and withdrawn recesses solemnity without gloom, and in its open and ornamented spaces, cheerfulness without frippery. Its very enclosure and tomb and monument should attest the cherished remembrance and the enduring affection of the living for the dead in the tender care with which they are beautified and preserved. Let the sweet violets strew the grave of infancy, and the roses wave above the bride's and the maiden's and the young man's rest, and the green foliage pleasantly overshadow the peaceful sleep of the aged, and the forest tree tower and sing its solemn requiem over
27 the great man's tomb. When all these conditions shall be combined, the place will do more than merely awaken emotions which are favorable to religious meditation and impression. The whole place will be full of the spirit and teachings of the Gospel. Its epitaphs will record the promises of God and utter the sublime truths and hopes which lay hold upon eternity. Its expressive symbols shall obtrude the same thoughts and hopes and teachings on the eye that will not pause to read the written epitaph. The tokens of tender care on the part of the bereaved which appear in the planted and watered rose tree and the trellised vine will speak of that rare combination of deep and yet resigned sorrow, and of that true and enduring affection which yet would not recall its object again to earth, which can be exemplified only under the teachings and the grace of that Saviour who "is the resurrection and the life." Here, in a sense even higher than that in which the great poet used the words, we find "sermons in stones" and "tongues in trees"—impressive sermons in the monumental marble; eloquent tongues of exhortation and of promise in the foliage and the flowers.

We anticipate, therefore, with confidence, that those who in successive

generations shall walk in this place of graves and bend over the tombs of departed friends, will find it good to be here. It will tell them of their mortality in connection with truths which shall rob it of its terrors. When we pass through the city of the dead, and with subdued and reverent spirit receive the silent messages which they address to us from their monuments, it cannot but "damp our trainless ardors, and abate that glare of life which often blinds the wise." When we see the common lot and the inevitable end of all men, how can we fail to feel the worthlessness of human distinctions, and to be content to do our allotted work in the place that Providence has assigned us? In such a scene we feel that our attempts to make more of life, to get more out it, and crowd more into it than the generations that have preceded us, cannot avail essentially to change the character of this our probationary and mortal state; cannot arrest the inevitable march of time, in whose grasp we are, as it hastens us forward and consigns our "dust to dust."

For we are the same things that our fathers have been;
We see the same sights that our fathers have seen;
We drink the same stream, and we feel the same sun,
And we run the same course that our fathers have run.

The thoughts we are thinking, our fathers would think;
From the death we are shrinking from they too would shrink;
To the life we are clinging to they too would cling;
But it speeds from the earth like a bird on the wing.

They died; aye they died! and we, things that are now,
Who walk over the turf that lies over their brow;
28 Who make in their dwellings a transient abode,
Meet the changes they met in their pilgrimage road.

Yet, hope and despondence, and pleasure and pain,
Are mingled together in sunshine and rain;
And the smile and the tear, and the song and the dirge,
Still follow each other like surge upon surge.

These solemn and profitable reflections, suggested by a scene to which we are allured by its beauty, will tend to give tranquility to their life, and peace to their death-bed.

Let, then, the work so auspiciously begun, go forward, and let it enlist the interest and the aid of those who, now temporary dwelling in the city of the living, are all denizens, and will soon be inhabitants, of some city of the dead. Let us here prepare for ourselves a pleasant home, to which our thoughts shall often and peacefully revert, in the spirit of those who feel that through grace they are passing from the changing cities of the living, through the silent city of the dead, to the city that hath no foundations, whose maker and builder is God. And may all who shall walk through these winding ways, and meditate upon friends that are gone, and upon their own departure, be consoled and uplifted by the ministries which nature, here commissioned to preach anew the lessons of the Gospel, shall impressively discharge. May the flower which blooms, and shed sweet odour over mouldering breasts, whisper to the hearts of the mourners who meditate upon the sad decay of that which was so fair and dear, of the blessed and beautifying resurrection. May the breeze that here shall fan the fevered brows of those who refuse to be comforted, bear to them messages from that spirit of all-sufficient grace of which it is the emblem,

which shall be given to resigned and believing souls. May these green slopes and enclosures send hope forward to that better land where—

> Bright fields beyond the swelling floods
> Stand dressed in living green.

My friends, as death has been robbed of its sting, and the grave of its victory, let us make the places of our rest beautiful, and hang around the tomb the emblems of hope and the garlands of triumph. For though, as we look below, we are compelled to say to corruption, "Thou art my father;" to the worms, "Thou art my mother and my sister!" yet, when we look above, it is permitted us to say to God, "Thou art my Father;" to Jesus, "Thou art my Savior;" to the Holy Spirit, "Thou art my comforter;" to Heaven, "Thou art my home;" Eternity, "Thou art my life-time;" to angels, and men made perfect, and dear ones that have gone before, "Ye are my companions, my brothers, my eternal friends!"

29 *Poem written expressly for the occasion by the Rev. Byron Sunderland.*

GLENWOOD.

These are God's acres, henceforth consecrate
To burial rites and slumbers of the dead,
Where mourning bands the sepulture shall wait,
And words of prayer and benison be said.

See, where the lodge looks down the city street,
And sculptured forms the sacred entrance keep,
As though sad seraphs lingered there to greet
The dead borne onward in their dreamless sleep.

Lo, where the ground by art and nature made
To knolls and dells, in undulation lies,
Where o'er the sunbeams into shadows fade,
As earth reflects the grandeur of the skies—

There stands the mausoleum down the way,
The vaulted marble turning towards the west;
Where trembling sunsets cast their parting ray
Back on those portals of untroubled rest.

Thence winding walks and pebbled pathways break
By glebes of grass, fair slopes and leafy glades,
Where weeping pilgrims years to come, shall take
Their weary courses through these haunted shades.

Meanwhile the groves and purpled lawns between,
Sip mingled beauties from the summer air;
Oak, cedar, cypress, in perennial green,
And the wan willow drooping silent there.

Fit funeral emblems, pointing towards the sky,
Through storm and darkness from this world of ill;
Yet telling ever to each passer by
That, like themselves, fond memory liveth still.

But crowning all, rise yon old sentry trees,
Where fresh-made mounds, alas! too soon may be;
So, in their semblance, one might deem he sees
The patriarch olives of Gethsemane.

30 Once in that garden, filled with midnight gloom,
Christ in his anguish bent the suppliant knee,
Ere from the fragments of his rended tomb,
The stars flashed forth, of immortality.

And here, as there, full many a heart shall break,
While here, as there, grief spends her piteous wail—
Yet o'er the Urn, the light of Hope may wake,
For Christ endured, and we in Him prevail.

His blood has mingled with earth's meaner dust,
His flesh reclaimed the furrows of the grave;
Sown on sepulchral fields, the seals of trust,
Presaging what shall thence in glory wave.

So when the spade shall turn this platted sod,
And germs of being fill the hallowed mold;
Oh, think not then life's fruitage lost to God,
Though pulseless forms lie festering and cold.

What if like shadows, ages long shall fly,
And scatter mildew through the planted loam;
Yet, when the autumn of the world draws nigh,
Will reaping angels shout the harvest home.

Such then be Glenwood, o'er whose charnel hall
No ruthless dim of human strife may roll—
Where flowers shall spring, and pensive thoughts shall fall
And Sabbath quiet soothe the fevered soul.

Oh, templed refuge from long carking woes!
Whose altar shrines sweet blossoms shall perfume,
Whose solemn aisles these wooded hills compose,
Whose grander cope the holy stars illume.

Here shall thy congregations ceaseless kneel;
Youth, strength, and beauty, one vast throng combined—
While for thy worship, day and night shall peal
The deep, old anthem of the organ wind.

Here massive vaults and monumental frames,
Here chiseled stone and graven cenotaph,
And tables carved with old familiar names,
Shall tell at last how drops the way-worn staff—

31 How homeless widow and pale orphan child,
How gray-haired man, proud son, and maiden fair,
Their journey ended o'er life's moor so wild,
To nature's dark returnless couch repair.

Here then shall rise the city of the dead,
Here rest in hope the beautiful and brave,
As rifled households one by one shall tread
Like Israel, each his own Machpelah's cave.

Here, oft in dappled morn or dewy eve
Shall kindred dress the tear-bathed turfs above,
And o'er the sleepers scented garlands weave
The last dear tribute of our thwarted love.

The last, save when, with low and stifled words,
The lover's moan, the mother's sobbing prayer,
Shall tone the music of the tuneful birds
With dirge-like echoes from the burdened air.

Full swift the sombre hearse may hither teem
The first fresh victim in his mortal swound;
Full soon the mattock may be bid to seam
The earth's warm breast, whereon they heap his mound.

For in yon famed metropolis, I ween,
The death shaft hurls, where her thousands throng—
And masses mustering in that mighty scene,
Shall hie them here, to slumber deep and long.

Here, where from sheltering ledge and broken glen,
Strange prophet-voices seem the soul to warn,
As though strong cherubs litanied to men
The coming world and resurrection morn.

As dawns that day eternal on the sight,
And cerements by trumpet-blasts are riven,
Then shall her dead come forth to life and light,
And Glenwood prove the garner-field of Heaven.

32 *Glenwood hymn.—By F. Cosby.*

In this, God's acre, this fair field of death,
How sweet to rest, the bright, blue sky beneath,
Amid the dreamy whisper of the trees,
And lulling murmur of its ceaseless breeze.

Far from the pomp of monumental pile,
And storied tomb in dim cathedral aisle,
Where spring its earliest hymn of gladness weaves,
And all its joyous life laughs out in leaves.

Where summer's splendors all their treasures pour
Like jewels surging on some fabled shore;
Or countless stars that on the tropic night
Flash forth the instant glory of their light.

Where autumn's mellow radiance lights the gloom,
And sheds its fading crimson o'er the tomb;
And lingering sunlight scatters o'er the sod
Its lessening beams, like parting smiles of God.

Here, in this forest temple, old and gray,
From life's tumultuous passions far away,
Where the heart worships silence for its psalm,
And keeps its Sabbath of perpetual calm;

Here, from this world of wail and weeping fled,
For evermore shall sleep the sacred dead,
Nor wake again, but in the better land,
From sin and suffering freed by God's own hand.

33 Rev. Mr. Hill, of the Baptist church, gave out, appropriate to the occasion, the sublime hymn, "Before Jehovah's awful throne," which was sung by the ladies and gentlemen present, to the familiar tune of "Old Hundred." The same reverend gentleman closed the ceremonies in an impressive benediction.

34 *Rules and regulations of the Glenwood Cemetery, in the District of Columbia.*

We are strangers and sojourners here. We have need of "a possession of a burying place, that we may bury our dead out of our sight." Let us have "the field and the cave which is therein; and all the trees that are in the field, and that are in the borders round about;" and let them be made sure for "a possession of a burying-place."—JUDGE STORY.

I. All lots shall be held in pursuance of "An act to incorporate the proprietors of Glenwood Cemetery," approved July 27, 1854, and shall be used for purposes of sepulture alone.

II. The proprietor of each lot shall have the right to inclose the same with a wall not exceeding one foot in thickness, nor two feet in height above the surface, to be placed within the limits of his lot; or with a railing (except of wood); but the managers request that all such railings

should be light, neat, and symmetrical, and must not be more than four and a half feet high.

III. Proprietors shall not allow the interment of colored persons to be made in their lots, nor any person for a remuneration.

IV. No interment or disinterment shall be allowed without permission being obtained at the office of the corporation.

35 V. The proprietor of each lot shall have a right to erect any proper stones, monuments, or sepulchral structures thereon, and to cultivate shrubs and plants in the same; but no tree shall be planted, and no tree growing within the lot or border shall be cut down or destroyed without the consent of the managers.

VI. If any trees or shrubs, situated in any lot, shall, by means of their roots, branches, or otherwise, become detrimental to the adjacent lots or avenues, or dangerous or inconvenient to passengers, the corporation shall have the right, and it shall be their duty, to enter the said lot and remove the said trees and shrubs, or such parts thereof as are detrimental, dangerous, or inconvenient.

VII. If any monument, effigy, or inclosure, or any structure whatever, or any inscription, be placed in or upon any lot, which shall be determined by the major part of the managers for the time being to be offensive or improper, or injurious to the appearance of the surrounding lots or grounds, the said managers, or a major part of them, shall have the right, and it shall be their duty, to enter upon such lot and remove the said offensive or improper object or objects.

VIII. The proprietors of lots and their families shall be allowed access to the grounds at all times, observing the rules which are or may be adopted for the regulation of visitors.

36 RULES CONCERNING IMPROVEMENTS.

Purchasers may improve their lots whenever it suits their convenience.

To insure the proper regulation of the grounds, the grade of all lots will be determined by the agents of the institution.

All workmen employed in the construction of vaults, inclosing of lots, erection of monuments, &c., must be subject to the control and direction of the agents of the institution; and any workmen failing to conform to this regulation will not be permitted afterwards to work in the grounds.

To protect the grounds, and especially improved lots, from injury by the introduction of casual workmen, who, not being regularly employed in the grounds, have no special interest in their preservation, the managers have made arrangements with responsible persons for the building of vaults, and also for making other improvements. Under this arrangement the work is executed more completely and durably, and at considerably less cost than could otherwise be done; the materials being purchased and transported in large quantities, and the labor being performed by men who are thoroughly acquainted with their business. Owners of lots, however, may, if they prefer to do so, employ other workmen, except for the grading of lots, and making excavation for vaults, digging graves, and sodding lots.

All earth and rubbish accumulated by proprietors of lots, or their agents, must be carefully removed as soon as possible, and deposited wherever the agents of the cemetery may direct.

Wooden enclosures are not allowed.

Vaults erected wholly or in part above ground must be furnished with shelves, having divisions, allowing interments to be separately made, and perpetually sealed, so as to prevent the escape of unpleasant effluvia.

37 The managers have no wish to interfere with the taste of individuals in regard to the style of their improvements; but yet, in justice to the interests of the whole, they reserve to themselves the right of preventing or removing any erection or inclosure which they shall consider injurious to the immediate locality, or prejudicial to the general good appearance of the ground; and also of removing or pruning any trees or shrubbery which may obstruct or mar the effect and beauty of the scenery, or may otherwise prove injurious or detrimental.

INTERMENTS.

A receiving tomb is provided at the cemetery for the accommodation of those who intend to purchase lots. Ten days from the time of interment are allowed for making the selection and removing the remains. When the improvement of a lot, or other circumstances, may make it necessary, a reasonable extension of the time will be granted.

This tomb is situated near the entrance to the cemetery, and is well adapted to the purpose for which it is built. It is fitted up with shelves, so as to render unnecessary the usual practice of heaping the coffins upon each other.

At the time of deposit the coffins are all numbered, and a registry made of them, with a view to distinguish them readily when finally removed, and thus prevent their being previously disturbed. In this, as in all arrangements pertaining to interments, care is taken to avoid everything that might be unpleasant to the feelings of relatives and friends, and to consult, as far as practicable, their peculiar wishes and views. The charge is two dollars for opening and three dollars per month thereafter. But unless removed within a reasonable time after the lapse of the period for which the body was deposited, it will be interred by the company at the expense of the party depositing it.

38 RULES CONCERNING INTERMENTS.

The duties of superintendent of interments are performed by the keeper of the grounds, who, with his family, resides at the cemetery.

II. In each case of burial, a statement giving the name, place of nativity, residence, with the number of the street, age, disease of the person to be interred, and also whether married or unmarried, must be handed to the secretary at the office, that an accurate registry of the same may be made.

III. Whenever interments are to be made, previous notice should be given at the office of the cemetery, on the day previous to the interment, if possible.

The size of the coffin, on the top, or if in a case, the size of the case, should be particularly mentioned. And when interments are to be made in private lots, the location of the grave in the lot should also be stated.

IV. All interments will be subject to the following charges, which, in all cases, must be paid at the office of the cemetery before the interment.

OPENING OF GRAVES.

Adult graves	$3 00
Children's graves	2 00

No interment in grave or vault without a permit.

Eight hours daylight must be given in advance for the preparation of a grave—or the company will not be responsible for its readiness.

Instalments due and unpaid and other arrearages (if any) must be paid before a permit to inter in the cemetery will be granted, and if not settled within two years after demand is made, their ground and right will be forfeited to the company.

39 To prevent negligence in the removal of bodies after being placed in the mausoleum, a deposit of twelve dollars is required, if not a lot holder, previously to granting the permit, out of which the expenses of interment may be paid, and the balance returned, should such neglect occur.

RULES CONCERNING VISITORS.

Each proprietor of a lot will be entitled to a ticket of admission into the cemetery with a vehicle, under the following regulations, the violation of which, or a loan of the ticket, involves a forfeiture of the privilege:

I. Visitors admitted to the cemetery at all times between sunrise and sunset.

II. All persons are requested to confine themselves to the avenues and walks, and avoid walking on the lots.

III. No vehicle will be allowed to pass through the grounds at a rate exceeding four miles the hour.

IV. No person having refreshments of any kind will be permitted to come within the grounds, nor will any smoking be allowed.

V. Persons having baskets or any light articles, and those having dogs, must leave them in charge of the porter.

VI. No horse may be left by the driver in the grounds fastened or unfastened.

VII. All persons are prohibited from picking any flowers, either wild or cultivated, or breaking any tree, shrub, or plant.

40 VIII. All persons are prohibited from writing upon, defacing, or injuring any monument, fence, or other structure in or belonging to the cemetery.

IX. Any person disturbing the quiet and good order of the place by noise or other improper conduct, or who shall violate any of the foregoing rules, will be compelled instantly to leave the grounds.

X. The porter is charged to prohibit the entrance of all improper persons; and also those who at any time shall have wilfully transgressed the regulations of the cemetery, although presenting tickets.

XI. The gates will be opened at sunrise and closed (for entrance) at sunset.

XII. No money may be paid to the porter, or any other person in the employ of the institution, in reward for any personal service or attentions.

Visitors are reminded that these grounds are sacredly devoted to the interment of the dead, and that a strict observance of all that is proper in a place devoted to such an object will be required of all who visit it.

The keeper of the grounds is authorized and directed to remove all who violate these ordinances or commit trespasses. Trespassers are also liable to criminal prosecution, and to a fine of fifty dollars, and will also be subjected to pay such damages, and to repair such injuries as they may have occasioned.

NOTE.—A suggestion to lot owners respecting interments in their plots, may be of use. It frequently occurs that messages are sent desiring that graves should be opened adjoining or near the graves of persons previously interred. Where graves are not designated by stones or otherwise,
41 it will be impossible, in process of time, to comply with the directions thus given, unless some system designating the grave be adopted. It is recommended, therefore, that each lot owner make a drawing of his plot on a blank page of his deed, and record on it every interment, with the name and date. Upon the occurrence of future interments, let a transcript of this map, with the place marked where the grave is desired to be opened, be duly sent. In this way every difficulty will be obviated, and an interesting family record will be made and preserved for future generations.

In adopting the foregoing regulations and suggestions, the managers of Glenwood Cemetery have followed the lines of safe precedents, viz, the experience of other institutions of the kind, modifying them to suit circumstances and conditions peculiar to itself, and which will perhaps require alteration hereafter. To the managers of the Baltimore Cemetery they are particularly indebted.

The lots in the cemetery vary in size from 80 to 320 feet; the price is twenty-five cents per square foot, which is much less than is charged in other cemeteries; and in addition to the price charged, the proprietors have appropriated a space of about two feet in width between the lots, making them all entirely separate from each other; and if two full lots be taken together, a deduction of ten per cent. from the price will be made; or if four be taken together, a deduction of twenty per cent. will be made, including the paths between the lots. A payment of ten dollars a lot is required at the selection, and three months will be allowed for the payment of the balance. Applications for burials, lots, and needed information, will be attended to if applied for at the office.

WASHINGTON CITY, D. C.

42 [PUBLIC—No. 35.]

An act to amend an act incorporating the proprietors of Glenwood Cemetery, approved July twenty-seventh, eighteen hundred and fifty-four.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the the above-entitled act of incorporation be, and the same is hereby, amended as follows, to wit:

First. The name and title of said corporation shall be The Glenwood Cemetery, and in that corporate name it shall hereafter sue and be sued as a body politic and corporate, and exercise all the corporate authority

and powers conferred upon it, and be subject to all the liabilities and duties imposed under the original act of incorporation aforesaid.

Second. That the affairs, business, and property of the said corporation shall be under the direction, control, and management of a board of five trustees, any three of whom shall constitute a quorum, with full authority to act, which board of trustees shall be elected annually, three by the proprietors of lots in said cemetery, and two by the original proprietors; and the trustees shall select and appoint, from their own board, a president, secretary, and treasurer, and also from their own board, or otherwise, a superintendent, to have the immediate custody, supervision, and management of the cemetery, under the rules and regulations of the board. The trustees shall have authority to fill temporary vacancies occurring in their board, and shall hold their offices until their successors are elected and qualified.

Third. The annual meeting of the proprietors of lots shall be held in the city of Washington on the first Monday of June of every year, the place and hour of assembling to be specified in a public notice previously given by the trustees elected by the lot proprietors. At such meeting there shall be at least twenty lot proprietors to constitute a quorum to transact business, either in person or by proxy, although a less number may adjourn the meeting from day to day until a quorum be present. In the election of the trustees at such meeting, each lot proprietor shall be entitled to one vote for each lot owned by him in good faith, upon which a burial has been made. The two trustees of the board which are to be elected by the original proprietors shall be elected on the first Monday in June of every year in such manner as said original proprietors shall determine.

Fourth. The affairs of the cemetery shall be so conducted under the authority of the board of trustees as to secure the equitable rights of each and every person having in any way any vested interest in the said cemetery. And the cemetery shall be amenable and subject to the jurisdiction of the equity courts of the District of Columbia for any disregard of the rights or interests of any person whatsoever. And any person who may refuse peaceable possession of said grounds to said trustees, or obstruct or disturb such possession in said trustees for said purposes of burial, shall forfeit and pay, as a penalty therefor, the sum of one hundred dollars for each and every day of such refusal or disturbance, to be collected in an action of debt, in the name of the cemetery corporation; and the sum that may be recovered shall be appropriated for the improvement of the cemetery grounds.

Fifth. That the words "the proprietors," where they occur in the original act of incorporation hereby amended, shall be interpreted and
43 construed to mean and shall signify the proprietors of lots in said cemetery, and which is hereby now declared by this amendment to be the true intent and meaning of said words.

Sixth. That from the receipts from the sale of lots, hereafter sold, of the ground now dedicated for burial purposes, there shall be paid, on the first Monday in June in each year, by the board of trustees, to the original proprietors, one-fourth of the gross receipts arising from such sales, the remainder to be devoted to the improvement and maintenance of the cemetery.

Seventh. That within ten days after the approval of this act, any five proprietors of lots in said cemetery may call a meeting by giving two days' notice thereof in any newspaper published in the city of Washington, at which meeting the said proprietors shall proceed, as provided in sections two and three of this act, to elect a board of trustees, who shall hold office until their successors are duly elected and qualified under the annual election to be held on the first Monday in June following.

SAM' J. RANDALL.
Speaker of the House of Representatives.
T. W. FERRY,
President of the Senate pro tempore.

Received by the President February 16, 1877.

[NOTE BY THE DEPARTMENT OF STATE.—The foregoing act having been presented to the President of the United States for his approval, and not having been returned by him to the house of Congress in which it originated within the time prescribed by the Constitution of the United States, has become a law without his approval.]

44 (Indorsed:) In equity 5877. Glenwood Cemetery Co. v. J. B. Close et al. Exhibit A to bill. Exhibit A. Filed Nov. 26, 1877. R. J. Meigs.

45 EXHIBIT C.

BAYONNE, N. J., *M'ch* 11, 1877.

GENTLEMEN: I am in receipt of yours under date of 9th instant, conveying information of your election by lot owners, as trustees of Glenwood Cemetery Company. In reply I beg leave to say that on April 7th, 1863, I became the sole & absolute owner of the property on part of which said cemetery is situate. I remained such owner until quite recently, but do not own it now. The charter which Congress has attempted to amend has never been accepted. No organization has ever been made under it to my knowledge, nor to my knowledge has it ever owned a foot of property. It is but just, however, to myself to say that, until recently, I did believe the company was properly organized. My attorney, however, has discovered the fact that it never was, and that the title to all the land remained in me until the recent sale. It is just to the lot owners to say that in my recent sale I reserved all lots heretofore sold in
46 the cemetery for the purpose of confirming the deeds heretofore given therefore; I am in a position, therefore, to assure you and all other lot owners that I am prepared to confirm their deeds so as to give them a legal title, subject to such rules as may be established, which will probably be the same as heretofore existing. If you will intimate to me the manner in which you wish such lots already sold confirmed to the purchasers, I shall be happy to have it done with the least possible trouble to them and to me. As to choosing trustees to represent myself or recognizing you as having any rights or authority in the premises, I respectfully decline.

Yours, very truly,

JOS. B. CLOSE.

To Messrs. S. T. G. Morsell, John McClelland, T. W. Bartley.

47 EXHIBIT E.—GLENWOOD CEMETERY.

Know all men by these presents that The Glenwood Cemetery Company, for and in consideration of the sum of one hundred and ninety dollars to them in hand paid by Thomas W. Bartley, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey to the said Thomas W. Bartley, his heirs and assigns, two lots of land in the Glenwood Cemetery, laid down in the plan of said cemetery in the office of said company, and therein designated as lots No. one hundred and thirty-two and one hundred and thirty-three in area G, containing six hundred and forty superficial feet:

To have and to hold the hereinabove granted premises to the said Thomas W. Bartley, his heirs and assigns forever, subject, however, to the conditions and limitations, and with the privileges specified in the rules and regulations, now in force, and such other rules and regulations as may be adopted hereafter for the management of said cemetery.

And the said The Glenwood Cemetery Company do hereby covenant to and with the said Thomas W. Bartley, his heirs and assigns, that they are lawfully seized of the herein granted premises in fee simple; that they have the right to sell and convey the same for the purposes above expressed, and that they will warrant and defend the same unto the
48 said Thomas W. Bartley, his heirs and assigns forever.

In testimony whereof the said The Glenwood Cemetery Company have caused this certificate of title to be signed by their president, and their common seal to be affixed hereto, this eighth day of March, in the year of our Lord one thousand eight hundred and seventy-three.

[SEAL.] J. B. CLOSE, *Pres't.*

RULES AND REGULATIONS.

1st. All lots shall be held in pursuance of "An act to incorporate the proprietors of Glenwood Cemetery," approved July 27, 1854, and shall be used for the purposes of sepulture alone.

2nd. The proprietors of each lot shall have the right to inclose the same with a wall not exceeding one foot in thickness nor two feet in height above the surface, to be placed within the limits of his lot, or with a railing (except of wood); but the managers request that all such railings should be light, neat, and symmetrical, and must not be more than four feet and a half high.

3rd. Proprietors shall not allow the interment of colored persons to be made in their lots, nor any person for a remuneration.

4th. No interment or disinterment shall be allowed without permission being obtained at the office of the corporation.

5th. The proprietors of each lot shall have a right to erect any proper stones, monuments, or sepulchral structures thereon, and to cultivate shrubs and plants in the same; but no tree shall be planted, and no tree growing within the lot or border shall be cut down or destroyed without the consent of the managers.

6th. If any trees or shrubs, situated in any lot, shall, by means of their roots, branches, or otherwise, become detrimental to the adjacent
49 lots or avenues, or dangerous or inconvenient to passengers, the corporation shall have the right, and it shall be their duty, to enter

the said lot and remove the said trees and shrubs, or such parts thereof as are detrimental, dangerous, or inconvenient.

7th. If any monument, effigy, or inclosure, or any structure whatever, or any inscription be placed in or upon any lot which shall be determined by the major part of the managers, for the time being, to be offensive, or improper, or injurious to the appearance of the surrounding lots or grounds, the said managers, or a major part of them, shall have the right, and it shall be their duty, to enter upon such lot and remove the said offensive or improper object or objects.

8th. The proprietors of lots and their families shall be allowed access to the grounds at all times, observing the rules which are or may be adopted for the regulation of visitors.

(Indorsed:) Exhibit (E). No. 1559. Liber . Deed. Glenwood Cemetery Company to Thos. W. Bartley. Lot 132 & 133, sec. G. No. fifteen hundred and fifty-nine. Filed Nov. 26, 1877. R. J. Meigs. Copy.

50 *S'p'a to ans.*

In the supreme court of the District of Columbia, the 25th day of October, 1877.

THE GLENWOOD CEMETERY, COMPLAINANT, *vs.* JOSEPH B. CLOSE ET AL., DEFENDANTS. } No. 5877. Eq'y dock. Subpœna to answer.

The President of the United States to Joseph B. Close, William S. Humphreys, Frederick N. Close, and R. S. Evans & George Clendenin:

You are hereby commanded to appear in this court, at its first special term occurring twenty days after the service of this subpœna, and answer the exigency of the bill this day filed and entitled as above, under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

[SEAL D. C.]

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Ass't Clerk.

MEMORANDUM.—That the defendant' herewith served is to enter their appearance in this suit, in the clerk's office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

51 *Restraining order.*

The defendant is hereby restrained as prayed in the within-mentioned bill, until further order, to be made, if at all, after a hearing, which is fixed for the 6th day of November, 1877, of which take notice.

By the court.

D. K. CARTTER,
Chief Justice.

Marshal's return.

Sum'd and served copy of notice of injunction on def't George Clendenin. Not to be found—the others.

Oct. 25th, 1877.

F. DOUGLASS, *Marshal.*

52 *Order for appearance of absent defendant, Nov. 9, 1877.*

In the supreme court of the District of Columbia, the 9th day of November, 1877.

GLENWOOD CEMETERY *vs.* JOSEPH B. CLOSE ET AL. } No. 5877. Equity.

On motion of the plaintiff, by Mr. Riddle, its solicitor, it is ordered that the defendants Joseph B. Close, Frederick N. Close, William S. Humphreys, and R. S. Evans cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court.

A. WYLIE,
Justice, &c.

53 *Hearing on application for injunction postponed.*

In the supreme court of the District of Columbia.

GLENWOOD CEMETERY CO. *vs.* CLOSE ET AL.

The motion for an injunction in the above-entitled cause coming on to be heard, it is ordered by the court that the hearing of said application be postponed to the first Tuesday in January, 1878.

And that in the mean time the restraining order be, and is hereby, rescinded.

By the court.

A. W.

54 *Demurrer.*

In the supreme court of the District of Columbia.

THE GLENWOOD CEMETERY, PLAINTIFF, *vs.* JOSEPH B. CLOSE ET AL., DEFENDANTS. } In equity. No. 5877.

The joint and several demurrer of Joseph B. Close, Frederick N. Close, and George Clendenin, to the bill of complaint of The Glenwood Cemetery, the above-named plaintiff.

These defendants, by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, do demur to said bill, and for cause of demurrer show:

That the said bill doth not contain sufficient matter of equity whereupon this court can ground any decree in favor of the said plaintiff or give the plaintiff any relief against the defendants.

55 And for further cause of demurrer these defendants further show that the plaintiff has not in its said bill of complaint shown any claim or right, title, or interest in or to the real estate and property in said bill particularly mentioned and described.

And for further cause of demurrer these defendants further show that the plaintiff has not in its said bill of complaint shown any authority or right to institute and maintain this cause.

And for further cause of demurrer these defendants further show that the plaintiff has not in its said bill of complaint shown the existence or organization of a corporation by the name of The Glenwood Cemetery, and as such empowered to maintain this suit.

And for further cause of demurrer these defendants further show that it is not shown by said bill of complaint that this suit was instituted or is maintained by said so-called corporation.

56 Wherefore and for divers other good causes of demurrer appearing in the said bill, the defendants do demur thereto and demand the judgment of this court, whether they shall be compelled to make any further or other answer to said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully maintained.

J. HUBLEY ASHTON,
NATH'L WILSON,
Solicitors for Def'ts.

We certify that in our opinion the foregoing demurrer is well founded in point of law.

J. HUBLEY ASHTON,
NATH'L WILSON,
Solicitors for Defendants.

STATE OF NEW JERSEY,
District of Columbia:

Be it remembered that on this 29th day of December, 1877, before the subscriber, a United States commissioner, personally appeared, George Clendenin, who, being first duly sworn, deposes and says that he is one of the defendants named in the foregoing demurrer, and that the same is not interposed for delay.

GEORGE CLENDENIN.

57 Sworn and subscribed to before me this 29th day of December, A. D. 1877.

[COMM'RS SEAL.]

HENRY R. ELLIOTT,
U. S. Comm'r for the Dist. of Col.

58 *Order overruling demurrer.*

In the supreme court of the District of Columbia.

GLENWOOD CEMETERY
vs.
JOSEPH B. CLOSE. } Equity. No. 5877.

This cause coming on to be heard on the bill, exhibits, and demurrer, was argued by counsel, and thereupon, upon consideration thereof, it is this fifth day of April, A. D. 1878, ordered, adjudged, and decreed that the demurrer be, and the same hereby is, overruled; and it is further ordered and decreed that the defendants have leave within fifteen days to file their answers, and that the hearing for an injunction and the receiver be resumed on the coming in of the answers:

By the court.

MACARTHUR,
Justice.

59 In the supreme court of the District of Columbia.

GLENWOOD CEMETERY, PLAINTIFF,
vs.
JOSEPH B. CLOSE ET AL., DEFENDANTS. } In equity. No. 5877.

The answer of Joseph B. Close, one of the defendants named in the above-entitled case, to the bill of complaint of the above-named plaintiff.

This defendant, now and at all times hereafter, saving to himself all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, saith:

First. This defendant, to the matter in said bill contained, and to so much thereof as sets forth that the Glenwood Cemetery is a body politic and corporate of the District of Columbia, says that the Glenwood Cemetery is not a body politic and corporate of the District of Columbia, and this defendant denies that there is any such corporation as the Glenwood Cemetery, as in the said bill supposed and mentioned.

Second. I admit that prior to 1854 I resided in the city of New York. I deny that prior to July, 1854, I combined, confederated, or undertook with the said William S. Humphreys, R. S. Evans, and George Clendenin to establish a cemetery in the District of Columbia for private gain and speculation. I deny that the land described in said bill was purchased and the title thereof temporarily conveyed to the said William S. Humphreys for the purpose of carrying out any such combination or undertaking.

I deny that I in any way co-operated with the said Humphreys, Evans, and Clendenin to procure the passage of the act of incorporation referred to in the first paragraph of said bill.

I admit that of the persons named as incorporators in said act of incorporation, the last four mentioned were non-residents of the city of Wash-

ington. Three of them were residents of the city of New York, and one was a resident of the city of Baltimore. I neither admit nor deny the correctness of the recital of the provisions of the said act of incor-
60 poration contained in the first paragraph of the bill of complaint, but refer to the said act as the same is to be found in the tenth (10th) volume of the Statutes at Large, page 789, and it is prayed that the same may be taken and considered as a part of this answer.

Third. I did not advise in, and had no knowledge of, the selection of the eight persons first named as the incorporators in said act, and I have no knowledge that their names were used for the purpose of enabling the four persons who were non-residents of the District of Columbia to obtain said act, and I do not know whether or not said persons were ever called upon, or refused permission to participate in the organization and management of said corporation.

I have no personal knowledge that any organization was formed under said act, or that there was any acceptance of said charter, or that there was ever any election at which I was elected president, and the said William S. Humphreys, William Phelps, and R. S. Evans were elected managers.

I have no personal knowledge that any board of managers was formally organized, or that, after organization, they appointed the defendant, George Clendenin, superintendent.

In January, 1876, my attention having been specially called to the subject by the action of Mr. Bartley and other lot owners, I made, for the first time, careful inquiry into the history of the act of Congress of 1854, and found evidence that satisfied me that said charter had never been accepted, and that there had never been any election of managers or officers of said company.

Knowing that I held the legal title to said property, and had never conveyed it, except by signing the certificates by which I intended to convey to the purchasers a good legal title to the lots purchased, and finding that the form of the certificates was accepted and approved by purchasers, who, as residents of the District of Columbia, had opportunity to know the exact condition of the title to the lands prior to the date hereinbefore mentioned, I never had made inquiry into the proceedings of the said Humphreys, in relation to said incorporators, and took it for granted that the relation in which I stood to the lot owners was perfectly satisfactory to them.

I do not believe, and therefore deny, that there was ever any acceptance of said charter, or any organization of the proprietors under said act of incorporation, or any election of president or managers, or any ap-
61 pointment, by the managers, of a superintendent; and I require the plaintiff to make strict proof of the allegations made in respect of said alleged acceptance and organization.

I have no knowledge that the said William Phelps and R. S. Evans were, in any way, engaged in or directed the management of said cemetery, or did any act whatsoever as incorporators of said company. I admt that neither the said Phelps nor Evans has ever given any personal attention to the management of said cemetery; but I aver that the said Humphreys, for a period hereinafter more particularly designated, and I, since the time hereinafter stated, have given all necessary personal attention to the affairs of said cemetery, and have conducted and managed the same by

personal direction, and through the defendant, George Clendenin, as superintendent.

Fourth. I admit that the land described in the third paragraph of the bill of complaint, situated in the District of Columbia, was purchased on the 2d day of April, 1852, by the said William S. Humphreys, from Junius J. Boyle, for the sum of nine thousand dollars ($9,000), as is shown by the deed from said Boyle, recorded April 6th, 1852, in liber J. A. S., No. 38, folio 138, one of the land records of Washington County, a true copy of which is filed herewith, and marked "J. B. C., Exhibit No. 1"; and it is prayed that the same may be taken and considered as a part of this answer.

Fifth. I admit that the passage of said act of incorporation, public ceremonies, and exercises took place which are described in the pamphlet filed with the bill of complaint and marked Exhibit A.

I deny that there was any dedication of the said lands and premises, by any deed, act, or gift other than said exercises and ceremonies. I deny that said exercises and ceremonies were done under my direction.

I had no personal knowledge that the rules and regulations contained in said pamphlet were prescribed by any board of managers. I admit that said pamphlet was publicly and generally circulated; but I aver, on information and belief, that said publication and circulation were by the direction of said Humphreys alone.

Sixth. I deny that after said exercises and ceremonies took place in relation to said cemetery, the said Humphreys conveyed said land and premises to me.

I deny, also, that by reason of said exercises and ceremonies
62 the said cemetery company became the actual owner of said land and premises and said cemetery grounds, and was in possession thereof as such, and that I was vested with the whole legal title to said lands and premises in trust for said cemetery corporation.

I admit the sale of lots and the receipt of moneys from numerous persons since the date of said act of incorporation, and that the certificates of the conveyances to the lot purchasers were duly executed, under the so-called corporate seal of said company, by my signing the same as president.

I admit that the entire tract of ground described in said deed to said Humphreys has heretofore been held continuously exempt from taxation, under the provisions of law in force in the District of Columbia.

I do not know whether numbers of citizens of the District of Columbia were, by the statements in said pamphlet, induced to purchase lots in said cemetery, and to expend money in ornamenting and improving the grounds and lots used for burial purposes therein.

The condition of the legal title of said property, and the circumstances under which I became the owner of the same, and connected with the management thereof, are hereinafter more fully stated.

Seventh. I do not know whether the residences of the persons named as managers of the said cemetery were publicly and generally known to the people of the District of Columbia. I deny, however, that the fact that I was not a resident of the District of Columbia interfered in any way with or injured the management of the affairs of said cemetery.

I deny that the said affairs were conducted in a way very unsatisfactory to the lot owners.

I deny that petty peculations and extortions upon the lot owners were practiced. I deny that the improvement of lots was interfered with by unwarranted demands of the superintendent.

I deny that the ornamental flowers and shrubs planted on the graves of the dead were frequently, or at any time, cut down because the superintendent or his assistants were not paid for taking care of them.

I deny, also, that numerous lot owners abandoned their lots, and removed the remains of their friends to other cemeteries.

I aver the truth to be, that from the time said cemetery was opened, to wit, on the 3d day of August, 1854, until about the 13th day of
63 January, 1876, during the whole of which period the said defendant Clendenin was superintendent of said cemetery, the management of said cemetery and its affairs, the condition of the grounds, and improvements which were made were entirely satisfactory to the lot owners, and no serious complaints were ever made.

On or about the 13th day of January, 1876, Thomas W. Bartley, esq., who signs himself in the bill of complaint as the president of the so-called board of trustees, for reasons and under the circumstances more fully recited in the answer of the defendant Clendenin, entered upon the work of taking the management of said cemetery from me, and of depriving me of my legal title to said premises.

I admit that by the efforts of the said Bartley, a number of lot owners, who had never previously made any complaint, or found any fault with the management of the affairs of the cemetery, were induced to make application to Congress for an amendment of the charter of 1854. A copy of the memorial to the lot owners is herewith filed, and marked J. B. C., Exhibit No. 2. [*Can't find it.]

It will be seen therefrom that no right or title was asserted in or to so much of said property as had not been sold to said lot owners, and that the object of the memorial, as therein expressed, was to obtain a proper share of authority and power in the management of the business of said cemetery.

I aver, upon information and belief, that so much of said act of Congress amendatory of the act of 1854, as provides a method for divesting me of my title in and to said property, was the contrivance of the said T. W. Bartley, made for the purpose of getting possession of said property without making proper compensation to me, its real owner, and the passage thereof was obtained by gross misrepresentations concerning the management and concerning the moneys which had been realized from the sale of the lots.

Eighth. I admit that on the 9th day of March, 1877, the deed was made by me to Frederick N. Close, which is referred to in the seventh paragraph of the bill of complaint. The circumstances under which said deed was made are hereinafter more fully stated.

Ninth. I admit that early in the month of March, 1877, certain of the lot proprietors in said cemetery held a special meeting; but I deny that the same was held in accordance with the provisions of said amendatory act.

I deny that the said S. T. G. Morsell, John McLellan, and T. W. Bartley were legally elected a board of trustees.

64 I deny that the so-called trustees were qualified to enter upon their duties. I admit receiving the notification referred to in the

* In pencil.

eighth paragraph of said bill of complaint, and the making of the reply therein stated.

I aver, upon information and belief, that the persons who voted and claimed the right to vote for said trustees represented but 54 of the 2,200 lots which had been sold.

My representative and agent was present at said meeting, and claimed on my behalf that, as I had provided at my own expense separate lots as a permanent burial place for over one hundred and fifty bodies that had been deposited in the mausoleum, and there left uncared for by the relatives and friends of the deceased persons, I was entitled to one vote for each of said lots, and for each lot remaining unsold, under the provisions of said amendatory act. My said agent was not permitted to cast any vote or to participate in the proceedings of the election of trustees, and was treated with great rudeness, and told that it would be time for him to speak when he was called upon.

Tenth. I have no personal knowledge that the possession of the said cemetery and premises was demanded on the 11th day of March, 1877, or of the refusal of the said defendant Clendenin to surrender the same to the said so-called trustees. I have, however, directed the said Clendenin, who is my superintendent, to retain possession of the same.

Eleventh. I have no knowledge of the occurrence of the so-called annual meeting of the proprietors in June, 1877. I deny, however, the legality of such meeting and of the election then held. I acknowledge the receipt of the notice of said election, but I deny the right of said lot-owners to elect trustees, and of the trustees so elected to fill any vacancies in the board. And I expressly deny the legality of the election and appointment of the trustees named in the tenth paragraph of said bill.

I have no knowledge of the alleged removal of the defendant Clendenin from the office of superintendent of said cemetery; and if said trustees attempted to exercise such power they exceeded their authority, and their act was null and void.

I have no personal knowledge of the refusal of the defendant Clendenin to surrender and give possession of said premises, and the books and papers connected with the business thereof, to the said trustees; but I further aver that I have given him instructions to hold possession of the same, subject only to my order.

65 I deny that any person or persons legally entitled to the exercise of any authority over said cemetery or any lots therein are wrongfully obstructed in the exercise of their rights, or hindered in any way in the discharge of their duties.

Twelfth. I deny that, since the amendment of the charter of said company, I have wrongfully and fraudulently repudiated the said corporate franchises and organization, and have wrongfully divested the said cemetery grounds and property from the use and control of the said corporation, and surreptitiously appropriated the same to my own private use.

I admit that various sums of money from the sale of lots and other sources have been received, but I deny that they have been diverted from the use to which they properly pertain, or that they have been appropriated exclusively to my own use.

I admit that sums of money are being received from the sale of lots in

said cemetery and from other sources; but I deny that the same belongs to the plaintiff, or that I, either alone or in co-operation with the other defendants, am converting the same to private use, to the neglect and injury of the cemetery grounds and company.

Thirteenth. I deny that I have ever been guilty of any fraud or conspiracy to commit fraud, whereby I have deceived or have combined with others to deceive and impose upon this community, or that I have obtained large amounts of money from the lot proprietors upon false pretenses and artifices.

Fourteenth. In the year 1853 I was a resident of the city of New York, and then had intimate social and business relations with the said William S. Humphreys, who died on the 25th day of March, 1877, in the city of New York. In April of the year 1853 said Humphreys applied to me for the loan of moneys, and offered to secure its repayment by a deed of certain property in Washington City, which he had purchased the previous year. He desired to borrow $20,000, and to give me a deed for the one moiety of the land, with the option to repay the amount borrowed or to give me one-half of the property. I advanced him moneys from time to time, and took a deed conveying to me one undivided moiety of said tract, which said deed was executed April 7, 1853, and was recorded on the 4th day of June, 1853, in liber J. A. S., 57, folio 260, a true copy of the same being filed herewith and marked "J. B. C., No. 3," and which it is prayed may be taken and considered as a part of this answer.

66

At the time of taking said deed, I had never been in Washington but once, and knew nothing of any project for the creation of any cemetery by any of the persons named as corporators in said act of 1854. My only object in making said loan and taking said conveyance was to give Mr. Humphreys my friendly assistance. After the execution of the said deed, I advanced to the said Humphreys further sums of money from time to time until in June, 1854, the advances amounted to over $27,000 (which were expended in the establishment of the cemetery).

In the meantime, I had become acquainted with Mr. Humphreys' plan for the creation of a cemetery. I may have known incidentally of efforts to obtain an act of incorporation, but I had no definite knowledge thereof, and took no part or interest therein, as I had no expectation of being in any way interested or concerned in such company, but hoped for and expected the return of my money with interest.

At the date last mentioned, that is, in June, 1854, it became necessary to pay for a mausoleum, which had been erected at considerable expense, and Mr. Humphreys applied to me for a further loan. I then took from him a second deed, which was executed on the 22d day of June, 1854, and which was recorded in liber J. A. S., 32, folio 266, conveying to me in fee the said lands and premises, a true copy of which is herewith filed and marked "J. B. C., No. 4," and it is prayed that the same may be taken and considered as a part of this answer.

This deed was subject to a deed of trust executed by the said William S. Humphries to Charles S. Wallach, on the 21st day of April, 1853, and recorded in liber J. A. S. 38, folio 140; a true copy of said deed is filed herewith, and marked "J. C. B., No. 5," and it is prayed that the same may be taken and considered as part of this answer. The notes secured by said deed of trust were paid by me when they became due, and

on the 1st day of June, 1857, the said trustee executed a deed releasing said property, as will be seen by reference to said deed, recorded in liber J. A. S. 161, folio 11, etc., a true copy of the same being hereunto attached, and marked "J. B. C., No. 6," and it is prayed that the same may be taken and considered as a part of this answer.

67 When the second conveyance was made to me, in June, 1854, it was agreed that one-half of the property should be reconveyed to the said Humphreys, upon his repayment to me of one-half of the advances which I had made.

I continued to make advances, when requested, up to the 24th day of September, 1859. I had advanced, in all, about $60,000, which had been expended on the cemetery.

The said Humphreys, in the mean time, having become somewhat embarrassed in circumstances, and unable to repay any of the moneys which he had borrowed from me, on the said 24th day of September, 1859, relinquished to me all his right, title, and interest in said property, and executed and delivered to me a paper writing as evidence of such relinquishment, a true copy of which is filed herewith and marked "J. B. C., Exhibit No. 7," and it is prayed that the same may be taken and considered as part of this answer. No person or persons other than the said Humphreys and myself contributed any of said money which was used in the purchase of said grounds, and in the preparation and construction of said cemetery, or had any right, title, or interest therein.

Up to the year 1854, and for some time thereafter, the said Humphreys had the exclusive management of the said property and cemetery, and conducted its affairs as though it belonged to him alone. The plans for the same made by his direction, and the ceremonies which are referred to in the bill of complaint as the dedication of said lands and premises, were under his exclusive control, and I had no knowledge thereof until after they had taken place.

I have now no recollection of ever having any conversation with the said Humphreys, or with any of the other persons named in said act of incorporation or the organization of the board of managers.

I have no knowledge by whom the corporate seal was prepared, or by whom the form of the certificate was presented.

No stock of the corporation was ever issued, so far as I know or am informed, and since the conveyance to me from the said Humphreys, and the release of the said deed of trust in 1859, I have been the sole owner of all the property conveyed to me by said deeds, saving and excepting the lots which were by me sold from time to time, and the proceeds of which sales I received. The title to the lots so sold I have never claimed, but have always averred that it was my intention to convey to the purchasers thereof a good and indefeasible legal title thereto, and I have always held myself ready, and now aver that I will at any time, upon the

68 request of any of the purchasers of said lots, make any conveyance or conveyances that may the more fully assure to the purchasers of lots a good and perfect legal title to the same.

I have not claimed, nor do I now claim, that such conveyances might be made by me as a matter of grace and favor, but I have distinctly recognized the right of said lot holders to have from me good and perfect deeds in fee of said lots.

Of the tract purchased by the said Humphreys and subsequently conveyed to me as aforesaid, about thirty acres had been, prior to the 2d day of August, 1854, laid off by the said Humphreys into lots, drives, and walks, and had been improved and embellished, and inclosed with a substantial fence.

This inclosure constituted the cemetery.

The remaining sixty acres so conveyed to me have never been divided into lots, but have remained, and still remain, woodland and pasture, and have been used for agricultural purposes, and surrounded by a post-and-rail fence.

I aver that the ceremonies which occurred on the 3d day of August, 1854, were not intended to be, and did not operate as a dedication or gift of the said lands, or any part thereof to any public or charitable use. I aver that the title to said lands which was vested in me by the conveyances aforesaid was not divested by the said ceremonies or exercises, or by the acts and declarations or publications made by the said Humphreys, or by any other person in relation thereto.

Since the said cemetery was opened about 2,200 lots have been sold, and the proceeds of such sales and all other income derived from the property have been applied primarily to the preservation, improvement, and adornment of the cemetery grounds, which have always been, and are now, maintained in as good a condition, in all respects, as the grounds of any other cemetery in the country, with few exceptions.

The avenues, walks, and drives have been kept in good order, and the grass on the lots has been cut and the leaves removed at least four times per year, without any cost whatever to the lot owners.

Since the said cemetery was opened, to January, 1876, the gross receipts from all sources from said property had not exceeded $160,000, of which amount $90,000 have been expended on the property in its care, preservation, and improvement.

69 About $70,000 have been repaid to me. The sums thus received by me amount, in the aggregate, to not quite 6 per cent. on the moneys actually expended by me in the purchase, preparation, and improvement of said cemetery, and leaves the capital so invested yet to be made out of the property which has not yet been sold.

The management of the said superintendent has been intelligent, honest, and satisfactory, and I have never heard of any complaint being made of his conduct, or of the condition of the grounds until the said Bartley undertook to resist the payment of a just and reasonable charge, which had been uniformly made and paid without objection.

When I learned that a number of the lot owners had petitioned to Congress to amend the act of 1854, I addressed to each one of the one hundred and sixty memorialists a circular, stating that not having received a single complaint since the establishment of the cemetery, over twenty years ago, I was anxious to know their grievances, and to have a statement of any moneys which had been improperly exacted or paid.

I received but four answers, and no grievances were specified.

I admit that after the passage of said amendatory act, through apprehension that my property was about to be confiscated and illegally appropriated, I made the conveyance referred to in said bill, not for the purpose of defrauding any person or persons who has or have any right, title, or

interest in the lots and property sold by me, but in order that I might the better secure time and opportunity to avail myself of my rights and remedies in the premises.

I further aver that I never have at any time intended to injure or defraud any person or persons whatsoever in the purchase and sale of said property, or any part thereof, and that I never have intentionally deceived either the public or any individuals in relation to the creation of said corporation, or the proceedings under and in pursuance of said act of Congress, or obtained any money by false representation concerning said property. The truth concerning the title thereto has always been a matter of public record.

While I recognize the rights of those who have purchased lots as aforesaid to have the property in said inclosure set apart and appropriated for cemetery purposes, I deny that the purchasers have acquired any title in and to that part of said inclosure not sold, or to the proceeds thereof, and I deny their title to any part of the sixty acres of said tract not inclosed as aforesaid, or to the proceeds thereof, and I aver that said amendatory act which takes from me three-fourths (¾) of the proceeds of the sales of all lots and gives them to other persons, not entitled, without any compensation to me, is in violation of the Constitution of the United States, and void and of no effect.

And having fully answered, I pray that I may be hence dismissed, with my reasonable costs in this behalf sustained.

JOS. B. CLOSE.

J. HUBLEY ASHTON,
NATH'L WILSON,
Solicitors for Defendants.

UNITED STATES OF AMERICA,
District of New Jersey, ss:

Joseph B. Close, being first duly sworn, deposes and says that he has read the foregoing answer by him subscribed, and knows the contents thereof; that the facts therein stated of his own knowledge are true, and those stated on information derived from others he believes to be true.

JOS. B. CLOSE.

Sworn and subscribed before me, at Jersey City, in said district, April 29, 1878.

[L. S.]

W. MUIRHEID,
U. S. Comm'r, Dist. of New Jersey.

I do hereby certify that William Muirheid, whose name appears to the foregoing jurat, is, and was on the 29th day of April last past, an acting United States commissioner, duly appointed, qualified and commissioned in and for the district of New Jersey, and that his name as above written is his own true and genuine signature.

Witness my hand, and the seal of the circuit court of the United States in and for the district of New Jersey, at Trenton, this 30th day of April, A. D. 1878.

[L. S.]

S. D. OLIPHANT, *Clerk, etc.*

(Copy.)

EXHIBIT J. B. C., No. 1.

This indenture, made this second day of April, in the year of our Lord eighteen hundred and fifty-two, between Junius J. Boyle and Ann Eliza Boyle, his wife, of the county of Washington, in the District of Columbia, of
71 the first part, and William S. Humphreys, of the city and State of New York, of the second part, witnesseth: That for and in consideration of the sum of nine thousand dollars, current money of the United States, to them in hand paid at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said parties of the first part have granted, bargained, and sold, aliened, enfeoffed, and conveyed, and by these presents do grant, bargain, and sell, alien, enfeoff, and convey, unto the said party of the second part, his heirs and assigns, all that part or parcel of land lying and being situated in county of Washington, in the District of Columbia, called Powell's Dividend, containing by resurvey seventy-five and a quarter acres, beginning for the same at a distance marked "A," near the entrance gate of a farm lately owned by Samuel Harrison Smith, and running thence south sixty degrees west seventy-five perches; thence south forty perches; thence north seventy-five degrees west twelve perches; thence south seventeen degrees east eleven perches, to a stone numbered twenty; thence south thirty-seven degrees west one hundred perches; thence south seventy degrees east seventeen perches; thence southeast by east seventy-eight perches, and thence by a straight line to the place of beginning. And also all that other tract, or piece, or parcel of land lying and being situate in the county and District aforesaid, containing nine acres, two roods, and thirty-nine perches, beginning for the same at a stake standing on the west side of the road leading from Smith's lane to North Capitol street, and running thence north fifty-eight degrees seventeen minutes west thirty-two and one twenty-fifth perches, to stone numbered seventeen; thence north twenty-two degrees fifteen minutes west sixty-six and one-seventeenth perches, to a stone numbered eighteen; thence south fifty-eight degrees seventeen minutes east seventy-five perches, to a stake on the west side of the road; and thence with the west side of the road, south fifty-six degrees west, forty-two and four-fifth perches, to the place of beginning, with the exception of a small portion of land on the east side of Powell's Dividend, heretofore conveyed to form part of public road, and being the two tracts or parcels of land sold and conveyed to said Junius J. Boyle and Joseph C. Turner by Phineas Bradley, and now called Shamrock Hill, together with all and singular the buildings, improvements, rights, ways, water-courses, privileges, heriditaments, and appurtenances to the same belonging or in any manner
72 appertaining: to have and to hold the said tracts or parcels of land and premises, with the appurtenances, unto him, the said party of the second part, his heirs and assigns, to his and their own proper use and benefit and behoof forever. And the said Junius J. Boyle, for himself, his heirs, executors, and administrators, by these presents, covenants, promises, and agrees to and with the said party of the second part, his heirs, executors, administrators, and assigns, that they, the said parties of the first part, and their heirs, the said hereby bargained, sold,

and conveyed tracts or parcels of land and premises, with the appurtenances, shall and will forever warrant and defend free and clear of and from all and every incumbrances of any nature and kind soever, unto him, the said party of the second part, his heirs and assigns, from and against them, the said parties of the first part, and their heirs, and from and against all persons lawfully claiming or to claim by, through, or under them, or any or either of them, and from and against all lawful persons and claims whatsoever.

In testimony whereof the said parties of the first part have hereunto subscribed their hands and affixed their seals on the day and year first hereinbefore written.

JUNIUS J. BOYLE. [L. S.]
ANN ELIZA BOYLE. [L. S.]

Signed, sealed, and delivered in presence of—
T. C. DONN.
J. W. BECK.

DISTRICT OF COLUMBIA,
Washington County, to wit:

We, Thomas C. Donn and Joseph W. Beck, justices of the peace in and for the county aforesaid, in the District of Columbia, do hereby certify that Junius J. Boyle, a party to a certain deed bearing date on the second day of April, 1852, and hereto annexed, personally appeared before us, in our county aforesaid, the said Junius J. Boyle being personally well known to us as the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under our hand and seal this third day of April, 1852.

T. C. DONN, *J. P.* [L. S.]
J. W. BECK, *J. P.* [L. S.]

73 DISTRICT OF COLUMBIA,
Washington County:

We, Thomas C. Donn and Joseph W. Beck, justices of the peace in and for the county aforesaid, in the District of Columbia, do hereby certify that Ann Eliza Boyle, the wife of Junius T. Boyle, a party to a certain deed bearing date on the second day of April, 1852, and hereunto annexed, personally appeared before us, in our county aforesaid, the said Ann Eliza Boyle being personally well known to us as the person who executed the said deed, and being by us examined privily and apart from her said husband, and having the deed aforesaid fully explained to her, she, the said Ann Eliza Boyle, acknowledged the said deed to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hands and seals this third day of April, 1852.

T. C. DONN, *J. P.* [L. S.]
J. W. BECK, *J. P.* [L. S.]

(Copy.)

EXHIBIT J. B. C., No. 3.

This indenture, made seventh day of April, in the year of our Lord

eighteen hundred and fifty-three, between William S. Humphreys and Catharine R. Humphreys, his wife, of the city of New York, in the State of New York, of the first part, and Joseph B. Close, of the same place, of the second part, witnesseth: That for and in consideration of the sum of four thousand five hundred dollars, current money of the United States, to them in hand paid at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said parties of the first part have granted, bargained, and sold, aliened, enfeoffed, and conveyed, and by these presents do grant, bargain, and sell, alien, enfeoff, and convey unto the said party of the second part, his heirs and assigns, one undivided moiety or half part or portion of all that tract or parcel of land lying and being situate in the county of Washington, in the District of Columbia, called Powell's Dividend, containing, by resurvey, seventy-five and a quarter acres, beginning for the same at a distance marked A, near the entrance gate of a farm lately owned by Samuel Harrison
74 Smith, and running thence south six degrees west, seventy-five perches; thence south forty perches; thence north seventy-five degrees west, twelve perches; thence south seventeen degrees east, eleven perches, to a stone numbered twenty; thence south thirty-seven degrees west, one hundred perches; thence south twenty degrees east, seventeen perches; thence southeast by east seventy-eight perches, and thence by a straight line to the place of beginning. And of also all that other tract, piece, or parcel of land lying and being situate in the county and District aforesaid, containing nine acres, two roods, and thirty-nine perches, beginning from the same, at a stake standing on the west side of the road leading from Smith's lane to North Capitol street, and running thence north fifty-eight degrees seventeen minutes west, thirty-two and one-twenty-fifth perches, to stone number seventeen; thence north twenty-two degrees fifteen minutes west, sixty-six and one-seventeenth perches, to a stone numbered eighteen; thence south fifty-eight degrees seventeen minntes east, seventy-five perches, to a stake on the west side of the road; and thence with the west side of the road south fifty-six degrees west, forty-two and four-fifth perches to the place of beginning, with the exception of a small portion of land on the east side of Powell's Dividend, heretofore conveyed to form part of public road, and being the two tracts or parcels of land now called Shamrock Hill, sold and conveyed to the said William S. Humphreys by Junius J. Boyle and Ann Eliza Boyle, his wife, by indenture bearing date on the 2d day of April, 1852, and recorded in liber J. A. S., No. 38, folios 138, 139, and 140, one of the land records for the county and District aforesaid, together with all and singular the buildings, improvements, rights, ways, water-courses, privileges, hereditaments, and appurtenances to the same belonging or in any manner appertaining; to have and to hold the said one undivided moiety or half part or portion of said tracts or parcels of land and premises, with the appurtenances, unto him, the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever. And the said William S. Humphreys, for himself, his heirs, executors, and administrators, by these presents covenants, promises, and agrees to and with the said party of the second part, his heirs, executors, administrators, and assigns, that they, the said parties of the first part, and their heirs, the said one undivided moiety or half part or portion of said tracts or parcels of land and premises,

75 with the appurtenances, shall and will forever warrant and defend unto him the said party of the second part, his heirs and assigns, from and against them, the said parties of the first part, and their heirs, and from and against all persons lawfully claiming or to claim by, through, or under them, or any or either of them, and from and against all lawful persons and claims whatsoever.

In testimony whereof the said parties of the first part have hereunto subscribed their hands and affixed their seals on the day and year first hereinbefore written.

C. R. HUMPHREYS. [SEAL.]
W. S. HUMPHREYS [SEAL.]

Signed, sealed, and delivered in presence of—
SANFORD B. HASTINGS and
JAS. GREEN.

STATE OF NEW YORK,
County of New York, to wit:

We, B. O'Connor and James Green, justices of the peace in and for the county aforesaid, in the State of New York, do hereby certify that William S. Humphreys, a party to a certain deed bearing date on the seventh day of April, 1853, and hereto annexed, personally appeared before us, in our county aforesaid, the said William S. Humphreys being personally well known to us as the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under our hands and seals this 10th day of June, 1853.

B. O'CONNOR, *J. P.* [SEAL.]
JAS. GREEN, *J. P.* [SEAL.]

STATE OF NEW YORK,
County of New York, to wit:

We, B. O'Connor and James Green, justices of the peace in and for the county aforesaid, in the State of New York, do hereby certify that Catharine R. Humphreys, the wife of William S. Humphreys, a party to a certain deed bearing date on the seventh day of April, 1853, and hereunto annexed, personally appeared before us, in our county aforesaid, the said Catharine R. Humphreys being personally well known to us as the person who executed the said deed, and being by us examined privily and apart from her said husband, and having the deed aforesaid fully explained to her, she, the said Catharine R. Humphreys, acknowedged the said deed to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

76 Given under our hands and seals this 10th day of June, 1853.

B. O'CONNOR, *J. P.* [SEAL.]
JAS. GREEN, *J. P.* [SEAL.]

STATE OF NEW YORK,
City and County of New York, ss:

I, Richard B. Connolly, clerk of the city and county of New York, and also clerk of the supreme court of said city and county, do hereby certify

that B. O'Connor and James Green, whose names are subscribed to the certificate of the proof or acknowledgement of the annexed instrument, and thereon written, were, at the time of taking proof or acknowledgment, justices of the peace, dwelling in the said city, elected and sworn, and duly authorized to take the same. And, further, that I am well acquainted with the handwriting of such justices, and verily believe that the signatures to the said certificate of proof or acknowledgement are genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court the 10th day of June, 1853.

[SEAL.] RICH'D B. CONNOLLY, *Clerk.*

(Copy.)

EXHIBIT J. B. C., No. 4.

This indenture, made the twenty-second day of June, in the year one thousand eight hundred and fifty-four, between Wm. S. Humphreys and Catharine R. Humphreys, his wife, of the city of New York, and State of New York, parties of the first part, and Joseph B. Close, of the same place, party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of four thousand eight hundred and twelve dollars and sixty-seven cents, lawful money of the United States, to them in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators, forever released and discharged from the same by these presents, have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents doth grant,
77 bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all that tract or parcel of land lying and being situate in the county of Washington, in the District of Columbia, called Powell's Dividend, containing, by resurvey, seventy-five and a quarter acres, beginning for the same at a distance marked A, near the entrance gate of a farm lately owned by Samuel Harrison Smith, and running thence south sixty degrees west, seventy-five perches; thence south forty perches; thence north seventy-five degrees west, twelve perches; thence south seventeen degrees east, eleven perches, to a stone numbered twenty; thence south thirty-seven degrees west, one hundred perches; thence south twenty degrees east, seventeen perches; thence southeast by east seventy-eight perches, and thence by a straight line to the place of beginning. And of also all that other tract, piece, or parcel lying and being situate in the county and District aforesaid, containing nine acres, two roods, and thirty-nine perches, beginning for the same at a stake standing on the west side of the road leading from Smith's lane to North Capitol street, and running thence north fifty-eight degrees seventeen minutes west, thirty-two and one-twenty-fifth perches, to stone numbered seventeen; thence north twenty-two degrees fifteen minutes west, sixty-six and one-seventeenth perches, to a stone numbered eighteen; thence south fifty-eight degrees seventeen minutes east, seventy-five perches, to a stone on the west side of the road; and thence with the west side of the road south fifty-six degrees west, forty-two and four-fifths perches to the place of beginning, with the ex-

ception of a small portion of land on the east side of Powell's Dividend, heretofore conveyed to form part of public road, and being the two tracts or parcels of land now called Shamrock Hill, sold and conveyed to the said William S. Humphreys by Junius F. Boyle and Ann Eliza Boyle, his wife, by indenture bearing date on the 2d day of April, 1852, and recorded in liber J. A. S., No. 38, folios 138, 139, and 140, one of the land records for the county and District aforesaid, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, dower, right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of
78 the first part of, in, and to the same and every part and parcel thereof, with the appurtenances; to have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his or their own proper use, benefit, and behoof forever.

And the said William S. Humphreys, for himself, his heirs, executors, and administrators, doth covenant, grant, and agree to and with the said party of the second part, his heirs and assigns, that the said parties of the first part, at the time of the sealing and delivery of these presents, are lawfully seized in their own right of a good, absolute, and indefensible estate of inheritance, in fee-simple, of and in all and singular the above granted and described premises, with the appurtenances, and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner aforesaid.

And that the said party of the second part, his heirs and assigns, shall and may, at all times hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy the above-granted premises and every part and parcel thereof, with the appurtenances, without any lot suit, trouble, molestation, eviction, or disturbance of the said party of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to claim the same. And that the same now are free, clear, discharged, and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and incumbrances of what nature or kind soever.

And also that the said parties of the first part, and their heirs, and all every person or persons whomsoever lawfully or equitably deriving any estate, right, title, or interest of, in, or to the hereinbefore granted premises, by, from, under, or in trust for them, shall and will, at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law of the said party of the second part, his heirs and assigns, make, do, and execute, or cause to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted, or so intended to be, in and to the said party of the second part, his heirs and assigns forever, as by the said party of the second part, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably advised or recognized; and
79 the said parties of the first part, their heirs, the above-described and hereby granted and released premises, and every part and par-

cel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part and their heirs, and against all and every person and persons whomsoever lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

W. S. HUMPHREYS. [SEAL.]
C. R. HUMPHREYS. [SEAL.]

Signed, sealed, and delivered in the presence of—
N. A. CHICKEY and
SAMUEL B. SOYAC.

STATE OF NEW YORK,
City and County of New York, ss:

We, B. O'Connor and William B. Meech, justices of the peace in and for the county of New York, in the State of New York, do hereby certify that William S. Humphreys and Catharine R. Humphreys, his wife, the parties to the within deed, bearing date the 22d day of June, 1854, personally appeared before us in our county aforesaid the said William R. Humphreys and Catharine R. Humphreys, his wife, being personally well known to us as the persons who executed the said deed and acknowledged that they had severally executed the within instrument, for the uses and purposes therein mentioned, as their free act and deed.

And the said Catharine R., on a private examination apart from her said husband, and having the deed aforesaid fully explained to her, acknowledged that she executed the said deed freely and without fear or compulsion from any one, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hands and seals this 22d day of June, 1854.

B. O'CONNOR, *J. P.* [SEAL.]
WM. B. MEECH, *J. P.* [SEAL.]

STATE OF NEW YORK,
City and County of New York, ss:

I, Richard B. Connolly, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county,
80 do hereby certify that B. O'Connor and W. B. Meech, whose names are subscribed to the certificate of the proof or acknowledgement of the annexed instrument, and thereon written, were, at the time of taking such proof or acknowledgment, justices of the peace in and for the city and county of New York, duly elected and sworn; and, further, that I am well acquainted with the handwriting of such justices, and, verily believe that the signatures to the said certificates of proof or acknowledgement is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 22d day of June, 1854.

[SEAL.] RICHARD B. CONNOLLY, *Clerk.*

(Copy.)

EXHIBIT J. B. C., No. 5.

William S. Humphreys to Charles S. Wallach.—Deed of trust.

This indenture, made this second day of April, in the year of our Lord eighteen hundred and fifty-two, between William S. Humphreys, of the city and State of New York, of the first part, and Charles S. Wallach, of the county of Washington, in the District of Columbia, of the second part, witnesseth: Whereas the said party of the first part is justly indebted unto Junius J. Boyle, of the city of Washington, in the full sum of seven thousand five hundred dollars for part of the purchase-money of the hereinafter-described tracts or parcels of land and premises, with the appurtenances, and for said sum has passed to the said Junius J. Boyle his three several promissory notes bearing even date with these presents, one for the sum of thirteen hundred and twelve $\frac{67}{100}$ dollars, one for the sum of two thousand dollars, and one for the sum of four thousand one hundred and eighty-seven $\frac{33}{100}$ dollars, and payable respectively in one, two, and five years after date, with interest, and being desirous to secure the payment of said promissory notes when and as the same shall become due and payable, has agreed to make and execute these presents: Now, therefore, this indenture further witnesseth, that for and in consideration of the premises and of the sum of five dollars, current money of the United States, to him in
81 hand paid at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said party of the first part has granted, bargained, and sold, aliened, enfeoffed, and conveyed, and by these presents does grant, bargain, and sell, enfeoff and convey unto the said party of the second part, his heirs and assigns, all those two certain tracts or parcels of land lying and being situate in the county of Washington, in the District of Columbia, now called and known by the name of Shamrock Hill, and being the same tracts or parcels of land sold and conveyed to the said party of the first part by the said Junius J. Boyle and Ann Eliza Boyle, his wife, by indenture bearing even date with these presents, and in said indenture more particularly by metes and bounds described, together with all and singular the buildings, improvements, rights, privileges, ways, water-courses, hereditaments, and appurtenances to the same belonging or in any manner appertaining; to have and to hold the said tracts or parcels of land and premises, with the appurtenances, unto him, the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever, in trust, nevertheless, to, for, and upon the following uses and trusts, that is to say, in trust, that in case the said party of the first part, his executors or administrators, do and shall fail to pay and satisfy said promissory notes, or any or either of them, or any part of them, or any or either of them when and as the same shall become due and payable, the said party of the second part, or his heirs, do and shall, at the request of the said Junius J. Boyle, his executors, or administrators, or assigns, sell said tracts or parcels of land and premises, with the appurtenances, after giving at least twenty days' notice in some paper printed and published in the city of Washington, at public sale, and upon such terms as he may deem most advantageous, and convey the same to the purchaser thereof; and out of the proceeds of said sale,

after retaining unto himself five per cent. upon the gross amount of said sale for his trouble in executing this trust, pay, in the first place, all expenses of said sale, and, in the next place, pay to the said Junius J. Boyle, his executors, administrators, or assigns, the whole amount of said promissory notes, or so much thereof as may then remain unpaid, whether the same shall have become due or not, with all interest which may have accrued thereon, and the balance, if any, pay over to the said party of the first part, his executors or administrators, do and shall, well and
82 truly, without default, pay and satisfy said promissory notes, when and as the same shall become due and payable, the said party of the second part, or his heirs, do and shall, at the requests and costs of the said party of the first part, his heirs or assigns, make and execute unto him, the said party of the second part, his heirs and assigns, a good and sufficient deed of release of said tracts or parcels of land and premises, with the appurtenances.

In testimony whereof the said party of the first part has hereunto subscribed his hand and affixed his seal on the day and year first hereinbefore written.

W. S. HUMPHREYS. [SEAL.]

Signed, sealed, and delivered in the presence of—
WM. J. MCCORMICK and
H. NAYLOR.

DISTRICT OF COLUMBIA,
Washington County, to wit:

We, William J. McCormick and Henry Naylor, justices of the peace in and for the county aforesaid, in the District of Columbia, do hereby certify that William S. Humphreys, a party to a certain deed bearing date on the second day of April, 1852, and hereto annexed, personally appeared before us, in our county aforesaid, the said William S. Humphreys being personally well known to us as the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under our hands and seals this sixth day of April, 1852.

WM. J. McCORMICK, *J. P.* [SEAL.]
H. NAYLOR, *J. P.* [SEAL.]

(Copy.)

EXHIBIT J. B. C., NO. 6.

This indenture, made this first day of June, in the year eighteen hundred and fifty-seven, by and between Charles S. Wallach, trustee, in the hereinafter in part recited indenture named, of Washington County, in the District of Columbia, of the first part, and William S. Humphreys, of the city and State of New York, of the second part, witnesseth: Whereas party of the second part, by his deed of indenture, duly made and executed, bearing date on or about the 2d day of June, in the
83 year eighteen hundred and fifty-two, did grant and convey to the said party of the first part, and to his heirs and assigns, all those two certain tracts or parcels of lands lying and being situate in the county of Washington, in the District of Columbia, then called and known by

the name of Shamrock Hill, and in said hereinbefore in part recited indenture mentioned and described, and premises, with the appurtenances, in trust, for the purposes therein mentioned, as by reference to said deed of indenture, duly recorded in the land records for the county and District aforesaid, in liber J. A. S., No. 38, folios 140, 141, and 142, will more fully and at large appear. And witness: The said debt, with interest and costs, have been fully paid and discharged to the said Junius T. Boyle, in said indenture named, or his assignees, and the purposes for which said trust was created have therefore ceased and determined; the said party of the second part is entitled in law to a reconveyance of the premises free and discharged of and from the said trusts as aforesaid, and as fully as if said deed had not been made. Now, this indenture witnesseth that for and in consideration of the premises, and of the further sum of one dollar to him, the said party of the first part, in hand paid, by the said party of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, he, the said party of the first part, has granted, bargained, sold, conveyed, released, and assigned, and by these presents does grant, bargain, sell, convey, release, and assign all and singular the aforementioned premises, with the appurtenances, and every part and parcel thereof, as fully and entirely as the same now are in law or equity vested, and standing in the said party of the first part by or under the said in part recited deed, unto him, the party of the second part, his heirs and assigns forever, to have and to hold the same, and every part and parcel thereof, with the appurtenances, unto him, the said party of the second part, his heirs and assigns forever, to his and their only proper use, benefit, and behoof forever, free, clear, and forever discharged of and from all and every right, title, interest, and trust now existing in said party of the first part by or under the said conveyance as aforesaid.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

CHAS. J. WALLACH, *Trustee.* [SEAL.]

84 Signed, sealed, and delivered in the presence of—
Z. K. OFFATT and
H. C. SPALDING.

DISTRICT OF COLUMBIA,
County of Washington:

Be it known that on this first day of June, in the year of our Lord one thousand eight hundred and fifty-seven, before the subscribers, two justices of the peace in and for the county and District aforesaid, personally appears Charles J. Wallach, trustee, the party grantor of the within instrument, who, being personally known to us, acknowledged the same to be his act and deed.

Given under our hands and seals this first day of June, 1857.

Z. K. OFFATT, *J. P.* [L. S.]
H. C. SPALDING, *J. P.* [L. S.]

EXHIBIT J. B. C., No. 7.

STATE OF NEW YORK,
City and County of New York:

This is to certify that I, William S. Humphreys, of the city of New

York, hereby acknowledge full satisfaction of Joseph B. Close for all my right, title, and interest secured to me by an agreement made on the 22d day of June, 1854, and hereby waive all rights which I have heretofore had under the same, he having satisfied me in full.

W. S. HUMPHREYS.

Witness:
A. W. CHEDSEY.

STATE OF NEW YORK,
City and County of New York, ss:

On this 24th day of September, 1859, personally appeared before me William S. Humphreys, to me known to be the same person described in and who executed the aforegoing papers, and acknowledged that he executed the same for the reasons and purposes therein mentioned.

EDMUND J. PETTIT,
Notary Public.

85 In the supreme court of the District of Columbia.

THE GLENWOOD CEMETERY, PLAINTIFF,
vs.
JOSEPH B. CLOSE ET AL., DEFENDANTS. } In equity. No. 5877.

The answer of George Clendenin, one of the defendants named in the above-entitled case, to the bill of complaint of the above-named plaintiff.

This defendant, now and at all times hereafter, saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer, answering, saith:

This defendant to the matter in said bill contained, and to so much thereof as sets forth that the Glenwood Cemetery is a body politic and corporate of the District of Columbia; and this defendant denies that there is any such corporation as the Glenwood Cemetery, as in the said bill supposed and mentioned.

First. I deny that prior to the year 1854, or at any other time, I combined and confederated with the other defendants named in said bill, or any of them, and for my own private gain and speculation undertook with them to establish, and did establish, a cemetery as a public institution for the burial of the dead of the people of the city of Washington, and District of Columbia, at or near said city. I deny that in pursuance of any combination, confederation, and purpose to which I was a party, the tract of land described in said bill was purchased and the title thereto temporarily conveyed to the said William S. Humphreys.

I deny that I in any way procured, or aided in procuring, the passage of the act of incorporation described in the first paragraph of said bill. I aver that I became the superintendent of said cemetery in the month of March, 1853, as the agent and employé of the said William S. Humphreys, and that I have since some time in the year 1857 continued to be, and now

am, the superintendent of said cemetery, as the agent and employé of the said Joseph B. Close, under the circumstances and conditions hereinafter more fully recited.

86 I admit, upon information and belief, that of the persons named as corporators in said act of Congress the first eight named were residents of the District of Columbia. I admit, also upon information and belief, that of the last four persons named as corporators in said act three were residents of the city of New York. I aver, however, that one of the said last-named four persons, viz, R. S. Evans, was a resident of Baltimore, and not of New York.

I neither admit nor deny the correctness of the recital of the provisions of said act of incorporation contained in said first paragraph of the bill of complaint, but refer to the said act as the same is to be found in the tenth volume of the Statutes at Large, page 789, and pray that the same may be taken and considered as a part of this answer.

Second. Whether the said eight persons first named in the first section of said act were merely nominal corporators, and were used for the mere purpose of enabling the said four non-residents to obtain said act of incorporation, and whether said first-named corporators were ever called upon or allowed to aid in the organization or management of the said corporation, I do not know, and leave the plaintiff to make such proof thereof as he may be able. I admit, however, that they have not, as I am informed and believe, taken any part in the organization of said corporation or in the management of said cemetery.

I have no personal knowledge that said Close, Humphreys, Phelps, and Evans, after the passage of said act of incorporation, organized themselves as proprietors under said act, or that they accepted said act and elected the said Joseph B. Close as the president, and the said William S. Humphreys, William Phelps, and R. S. Evans, managers. I deny that the said Joseph B. Close, William S. Humphreys, William Phelps, and R. S. Evans, as managers or incorporators under said act of incorporation, ever managed, or assumed to manage the affairs and business of said cemetery. I aver the truth to be that neither the said William Phelps nor the said R. S. Evans ever, at any time, assumed to have anything to do with the management of said cemetery, but that the said William S. Humphreys, through me as his agent and superintendent, had the sole management of the said cemetery from the date of the purchase by him of said lands to some time in the year 1857, and that from said last-mentioned date continuously to the present time the said Joseph B. Close, through me as his agent and superintendent, has had the sole direction and management thereof.

87 While not denying, upon my personal knowledge, that there was an organization perfected under said act of incorporation, and a president and managers elected, I aver the truth to be, that I have never been cognizant of any meeting held by said incorporators, or any of them, nor did I know, or have I ever heard of the existence of any minutes, books, or records of the proceedings of such meeting or meetings, or of the acts and doings of said incorporators, nor have I ever known or heard of any person or persons named in said act, except the said William S. Humphreys and Joseph B. Close, exercising or claiming the right to exercise any authority or control in the management of said cemetery.

In the early part of the year 1852, I was requested by the said William

S. Humphreys to come from the city of New York, where I was then residing, to the city of Washington, to take charge of a piece of property, of which the said Humphreys said that he had recently become the owner. On my arrival in the city of Washington on the last day of February, 1853, I found that the said Humphreys on the second day of April, 1852, had purchased from one Junius J. Boyle the tract of land described in the bill of complaint, and that he had received therefor from the said Boyle a deed in fee, which is recorded in liber J. A. S., No. 38, folio 138, one of the land records of Washington County. A part of this tract of land, containing in all about ninety acres, the said Humphreys proposed, as he informed me, to convert into a cemetery, and had then, and for some time previously had maintained, a considerable number of men at work in draining, grading, and laying out about thirty acres of the tract, according to plans furnished by one Captain Roche, a civil engineer. I was at once appointed to superintend the work, which was prosecuted vigorously during the remainder of the year 1853, until it was finally completed on or about the 2d day of August, 1854. On that day the religious ceremony was held which is referred to in the bill of complaint, and described in the pamphlet attached to the said bill as an exhibit. Up to that time there had been expended in the preparation of the grounds not less than forty thousand dollars, of which amount about thirty-two thousand dollars had been disbursed by me.

Every dollar thereof was paid by and had been received from the said Humphreys and the said Close, who (the said Close) from time to
88 time, as I am informed and believe, loaned money to said Humphreys, taking as security therefor a deed of one undivided moiety of said lands.

Of the tract purchased by the said Humphreys as aforesaid, thirty acres were laid off into lots, drives, and walks, and were inclosed by a suitable fence. The remaining sixty acres have never been divided into lots, but have remained and still remain, a separate inclosure, and have been used as a pasture, except three acres, used for a garden.

Third. I admit, that, after the passage of the said act of incorporation, the religious exercises and public ceremonies were held and observed, of which a true account was given in the pamphlet filed as an exhibit to said bill, and marked A. Public notice of said exercises and ceremonies was given before they were held. I have no knowledge, however, that said lands and grounds were dedicated to the purposes of said cemetery in any way, or by any act or acts done by or on behalf of the said defendants or any of the persons named in said act of Congress, other than by said ceremonies and religious exercises.

The proceedings referred to were under the direction of the said Humphreys, and I am not informed, nor do I believe, that the said Close, Phelps, and Evans had anything to do therewith, either as a board of managers of said corporators or as individuals.

I do not know of my own personal knowledge, by whom the rules and regulations for said cemetery were prescribed, nor by whom the pamphlet containing them was compiled. A number of copies of said pamphlet were sent to me by the said Humphreys, and my belief is that they were prepared by him.

Fourth. I admit that the said Humphreys, by deeds dated on the

day , 185 , conveyed the legal title to the said premises to the said defendant Close. I deny that the said Close had previously been elected president of said cemetery corporation, and upon information and belief, I I deny that the said Humphreys had temporarily held said legal title in trust for the purposes stated in said bill. I deny that, by virtue of the proceedings recited in said bill, or the so-called dedication therein described, the said cemetery company became the actual owner of said premises and cemetery grounds, and was in the possession thereof as such, and that the said defendant Close held the legal title to the said land and premises in trust for the said cemetery corporation.

89 Fifth. I do not know whether many persons purchased lots and buried deceased members of their families in said cemetery from the consideration that it was an incorporated company of said District; and I leave the plaintiff to make such proof of his allegations in that respect as he may be able to produce. I aver that there was never, at any time, any misrepresentation as to the residences of persons whose names appear in said pamphlet as managers of said cemetery, or as to the title by which the lands and premises described in said bill of complaint were held. I deny, however, that the affairs of said cemetery were conducted in a way very unsatisfactory to the owners of lots. I deny that petty peculations and extortions upon lot holders were practiced. I deny that improvements of lots were interfered with by the demands of the superintendent. I deny that the ornamental flowers and shrubs planted on the graves of the dead were frequently or at any time cut down because the superintendent and his assistants were not paid for taking care of them. I deny, also, that numerous lot owners abandoned their lots and removed the remains of their friends to other cemeteries.

I aver the truth to be, that from the time the said cemetery was opened, to wit, on the 3d day of August, 1854, until the 13th day of January, 1876, during the whole of which period I acted as superintendent as aforesaid, under the direction of the said Humphreys and of the said defendant Close, the management of said cemetery and its affairs, the condition in which it was kept, and the improvements which were made were entirely satisfactory to the lot owners, and no serious complaints were ever at any time made.

About 2,200 lots have been sold, and the proceeds of such sales, and all the other income derived from the property, were applied primarily to the preservation, improvement, and adornment of the cemetery grounds, which have always been in a condition to compare favorably with the grounds of any other cemetery in the country.

The avenues and walks have been kept in good order, and the grass on the lots has been cut at least four times a year, without any cost whatever to the lot holders.

During the period mentioned the gross receipts have not exceeded $160,000 of which amount $90,000 have been expended on the property and in the care and preservation and improvement of the same; $70,000 have been paid to the owners. The amounts received have not, in the aggregate, quite produced 6 per cent. on the moneys that have been expended.

90 In said month of January, 1876, Thomas W. Bartley, esq., who signs the bill of complaint as president of the board of trustees of

Glenwood Cemetery, applied to make an interment in a lot which he had previously purchased. The undertaker, through whom the application was made, was informed that a bill for $20 was due from Mr. Bartley for sodding his lots, and that under the rules and regulations which were then in force, and which were reasonable and had always theretofore been complied with without objection, the interment could not take place until the said charge was paid.

The undertaker returned, and informed me that Mr. Bartley declared, in very violent language, that he would not pay the charge.

At a later day the bill was paid, and Mr. Bartley declared to the person to whom it was paid, that he would make Clendenin (meaning me) "sweat for his act."

This threat he proceeded to carry into effect by an active canvass among the lot holders, to obtain their co-operation in an application to Congress. Influenced in a great measure, as I believe, by the angry and exaggerated, if not false statements made by the said Bartley, concerning the condition of the property and the conduct of the superintendent, and a number of the lot owners, who had never made any complaint to the superintendent, joined in a petition for such an amendment of the original charter as would give the lot owners a proper share of authority in the management of the cemetery. I aver that said lot holders did not then aver or claim, nor had they ever claimed, that the legal and equitable title to so much of said property as had not been sold to said lot owners was not in the defendant Close; and I aver further that the amendatory act passed by Congress, a copy of which is attached to the bill of complaint, was a contrivance of the said Bartley, aided by the said Sherman, to deprive the said defendant Close of his property, without compensation, for the benefit of persons not entitled thereto.

Sixth. I am informed, and believe, that the said defendant Close did, on the 10th day of March, 1877, convey the legal title to said premises to his son, Frederick N. Close, but I do not know the condition of said transfer or the circumstances under which the same was made.

Seventh. I admit that early in the month of March, 1877, certain of the lot proprietors in said cemetery held a special meeting.

91 I deny that said meeting was held in accordance with the provisions of said amendatory act, and I deny that S. T. G. Morsell, John McLelland, and the said T. W. Bartley were duly elected as a board of trustees. At said meeting, of the two thousand two hundred lots that had been sold, but fifty-four were represented.

The representative and agent of said defendant Close was then present, and claimed on behalf of the said Close that, as he, the said Close, had provided, at his own expense, separate lots as a permanent burial place for the interment of over one hundred and fifty bodies that had been deposited in the mausoleum, and there left uncared for by the relatives and friends of the deceased persons, the said Close was entitled to one vote for each of said lots and for each of the lots remaining unsold. The said agent, who was duly authorized to act in that behalf by the said Close, was not permitted to cast any votes or to participate in the election of trustees, and was treated with great rudeness, and was told it would be time enough for him to speak when he was called upon.

I have no personal knowledge of the other averments contained in the

eighth paragraph of the plaintiff's bill, and leave the plaintiff to make such proof thereof as he may be able.

Eighth. I admit that on or about the 11th day of March, 1877, certain persons, claiming to be authorized thereto by the board of trustees, demanded of me possession of said cemetery premises and grounds; but I deny that said persons had any legal right or authority to make such demand. I admit that I refused to surrender and give possession thereof to said persons.

Ninth. I have no personal knowledge of the holding of the meeting referred to in the tenth paragraph of said bill, and of the other facts therein averred, except as to the demand made of me for the possession of said cemetery grounds, property, books, and papers thereof, and of my refusal to surrender the same.

I am informed, and believe, however, that at said meeting the voters present represented but thirty-eight (38) of all the lots sold by Joseph B. Close. And I aver, upon information and belief, that the election of trustees at said meeting and the filling of the vacancies in said board of trustees were without authority of law, and null and void.

I admit that I retained control and management of said cemetery, as superintendent thereof, under the direction of the said defendant, Joseph B. Close.

92 Tenth. I deny that I have at any time wrongfully and fraudulently repudiated the corporate franchise and organization under the charter referred to in the eleventh paragraph of said bill, and that I have wrongfully diverted the said cemetery grounds and property from the use and control of said corporation, or surreptitiously appropriated the same to my own use.

I admit that I have received, as such superintendent, from the sale of lots in said cemetery, and from other sources, considerable sums of money; but I deny that they have been diverted from the uses and purposes to which they properly belong, or that I have wrongfully appropriated the same to my own use since the organization of said so-called company under said amendatory act of Congress, or that I have obtained any moneys that should properly have been paid over to the said plaintiff.

93 I admit that moneys are being daily received from said cemetery from the sale of lots and from other sources; but I deny that the same or any part thereof belongs to the plaintiff, or that I am now wrongfully converting, or have heretofore wrongfully converted, the same to my own private use to the neglect and injury of the said cemetery grounds and company.

And having fully answered, I pray that I may be hence dismissed, with my reasonable costs in the behalf sustained.

GEORGE CLENDENIN.

J. HUBLEY ASHTON,
NATH'L WILSON,
Solicitors for Defendants.

GEORGE CLENDENIN, being first duly sworn, deposes and says that he has read the foregoing answers by him subscribed, and knows the contents thereof, and that the facts therein stated as of his own knowledge are

true, and those stated upon information derived from others he believes to be true

Sworn to and subscribed before me this 1st day May, A. D. 1878.

BERTRAM ZEVERLY,
U. S. Comm'r D. C.

94 *Borcherling's petition to become def't.*

In the supreme court of the District of Columbia. In equity.

THE GLENWOOD CEMETERY
vs.
JOSEPH B. CLOSE & OTHERS.

Charles Borcherling, of the city of Newark, county of Essex, and State of New Jersey, filed this his humble petition to the court in this cause, and prays that he may be made a defendant to the bill of complaint therein, and in all proceedings taken in the suit by reason of his interest therein as hereinafter stated.

Joseph B. Close, defendant in said suit, is a citizen and resident of the city of Bayonne, in the county of Hudson and State of New Jersey. He has resided there a long while, and, as your petitioner is informed and believes, since the year one thousand eight hundred and sixty. He is a man of family, having a wife named Ellen M. Close and ten children.

95 About the nineteenth of October, one thousand eight hundred and seventy, his said wife, Ellen M. Close, filed *his* bill of complaint in chancery of New Jersey against him, the said Joseph B. Close, alleging long continued cruelty by him toward her, habitual and extreme, and without justification, and such as rendered it improper and unsafe for her to continue to live with him as his wife, and praying that a decree might be made by said court of chancery for a divorce of said Ellen M. Close from her said husband from bed and board forever thereafter, and for alimony and maintenance of herself and certain of her children, and that said court might make such decree, and take such order touching said alimony and maintenance as from the circumstances of the parties and the nature of the case might be fit, reasonable, and just, and might enforce performance of said decree as ordered by such lawful ways as were
96 used and according to the statutes of New Jersey and the cau'se and practise of said court.

Said Joseph B. Close was duly served with process in said suit, answered said bill, and such proceedings were had upon the filing thereof that, by the final decree of said court of chancery in said cause, made in obedience to and in conformity with the decree of the court of errors and appeals, in the last resort in all causes of said State, and bearing date the twenty-second day of July, one thousand eight hundred and seventy-five (said decree being made after another decree of said court of chancery previously made whereby said divorce prayed for as aforesaid was decreed), it was adjudged and decreed, among other things, that said Joseph B. Close should pay to said Ellen M. Close, or to her order, during her natural life, or till the further order of said court to the contrary, the

97 annual sum of three thousand dollars, in twelve equal instalments, each payable on the second Monday of every month, the first thereof to be paid on the second Monday of February, one thousand eight hundred and seventy-five, the same being considered a suitable allowance, having regard to the circumstances of the parties, for the support and maintenance of said Ellen M. Close, and to be used by her for the support, maintenance, and education of three infant children in said decree named; that said Close should further pay said Ellen M. Close, or her solicitors, on the second Monday of February, eighteen hundred and seventy-five, the sum of twelve hundred and twenty-five dollars, as and for arrears of alimony, and for alimony up to said second Monday of February; that he do further pay said Ellen, or her solicitor, on said second Monday in February, of said year, the unpaid costs in said
98 suit taxed and to be taxed, and also thirteen hundred and *and* seventy-eight dollars, which was thereby adjudged to be the reasonable counsel fee of her counsel in said court of chancery, and two hundred and fifty dollars, an additional counsel fee, for securing in said court of errors and appeals; that said Joseph B. Close should, within ten days after serving upon him, or his solicitor, of a copy of said decree, give reasonable security for the punctual payment of such sums at the time above specified, and in*form* his neglect and refusal to give such reasonable security as shall be approved of by the chancellor within the time specified, or upon this default and that of his security, in case such security shall be given, to pay such annual sum at the time when the same might fall due, that said Ellen M. Close might apply to said court to award and issue process for the immediate execution of said Joseph B. Close's personal estate, and the rents and profits of his real estate, and to appoint a
99 receiver thereof, according to the statutes in such case made and provided.

And your petitioner shows that afterwards, and on the third day of November, in the said year one thousand eight hundred and seventy-five, another order and decree was made by said court of chancery in said cause for the enforcement of the payment of said alimony directed to be paid as aforesaid of the tenor and effect following; that is to say:

In chancery of New Jersey.

BETWEEN ELLEN M. CLOSE, COMPLAINANT, *and* JOSEPH B. CLOSE, DEFENDANT. } On petition for enforcement of alimony, &c.

This matter, coming before the court as the petition of the said Ellen M. Close, and the affidavits thereto annexed, and it appearing that
100 serving of each of the decrees made in this cause, the first upon the twenty-ninth day of January, one thousand eight hundred and seventy-five, which on appeal by said Joseph B. Close was affirmed by the court of errors and appeals in the last resort, &c., and the other made upon the twenty-seventh day of July, one thousand eight hundred and seventy-five, after the record and proceedings in this cause were remitted to this court had been duly made upon the defendant by delivering of a copy thereof respecting to his solicitor more than sixty days since; that said serving of said last-mentioned decree was accompanied by a demand in writing, duly

read as aforesaid, of the performance of all matters decreed by the first-mentioned decree, and notices that failing the same for the space of ten days thereafter application would be made to the chancellor for at-
101 tachment and other relief; and that notwithstanding said Joseph B. Close had in nowise performed any of the directions of said decrees, or either of them, it is thereupon, on the third day of November, one thousand eight hundred and seventy-five, ordered and decreed that execution do immediately issue against the goods and chattels, lands, and tenaments of said Joseph B. Close for the recovery of the alimony in arrears and due the first Monday in February, one thousand eight hundred and seventy-five, and of the costs and counsel fees in said decrees respecting mentioned. And it is further advised that process do issue for the immediate sequestration of the personal estate and of the rents and profits of the real estate of said Joseph B. Close, and that Charles Borchenlings, junior, be appointed receiver thereof. And it is further ordered that forthwith upon the serving upon him the said Joseph B. Close of
102 a duly certified copy of this decree, he do forthwith sign, seal, and deliver unto said receiver an assignment of all his rights and titles to all and every his personal estate whereon situate, and especially to all and sundry the capital stock of the Glenwood Cemetery,* and all dividends, profits, or other monies to him coming therefrom or from any office thereof, and to all and sundry the rents and profits of his real estate whatsoever and wheresoever. And it is ordered that such assignment to said receiver be made after the form or according to the tenor of the form of assignment hereto annexed.

It is further ordered that said receivers do proceed forthwith to take possession of all said personal estate and rents and profits, and do apply the same, after defraying the necessary expenses and charges, first to the pay-
103 ment of the alimony of three *of three* thousand dollars per annum, fixed and ordered by said decree of the twenty-ninth day of January, one thousand eight hundred and seventy-five, so far as the same has seemed and shall hereafter seem—then to the payment and discharge of the alimony pending in mentioned, and ordered to be paid by said decree, and of the costs and counsel fees mentioned in said decrees, respecting, unless the same shall be paid or raised under the execution hereby ordered.

And it is further ordered that any monies received by said receiver, over and beyond what shall be necessary for the payments aforesaid, as they shall from time to time become due, be paid to said Joseph B. Close, and the said receiver is required, before entering on the discharge of his
104 duties under this order, to make oath faithfully to perform the same, and to make report at least once in three months of his proceedings in the premises.

THEODORE RENEGAN, *C'r.*

Know all men by these presents, that I, Joseph B. Close, of the county of Hudson, New Jersey, in obedience to the order of the court of chancery of said State, that in consideration of one dollar to me paid, do hereby bargain, sell, assign, transfer, and set over one cent, Charles Berchenling, junior, appointed by said gen'l receiver of my personal estate, and of the

(*In pencil on margin:) None ever issued.

rents and profits of my real estate, all and sundry, my said personal estate wherever situate, and especially all and sundry, the capital stock of the Glenwood Cemetery, in Washington, D. C., and all profits, dividends, or other monies to me coming therefrom, or from any office thereof,
105 and to all and sundry, the rents, profits of my real estate, whatsoever and wheresoever, to have and to hold the same, and said Charles Berchenling, junior, receiver as aforesaid, to be by him disposed according to the orders of said court of chancery, made and to be made in a certain cause, wherein Ellen M. Close is complainant and Joseph B. Close is defendant.

In witness whereof I have hereunto set my hand and seal this day of one thousand eight hundred and seventy-five.

Sealed and delivered in presence of—

And your petitioner shows that said Joseph B. Close afterwards, and on the twenty-fourth day of December, one thousand eight hundred and seventy-five, said Joseph B. Close signed and sealed an assignment
106 of the tenor and effect aforesaid, and delivered the same to your petitioner who had previously taken, subscribed, and filed the oath required by said decree.

And your petitioner refers to a certified copy of the proceedings above recited, and to said deed of assignment, for further particulars in regard thereof.

And your petitioner shows that by virtue of said decree of the date of November third, eighteen hundred and seventy-five, and of said deed of assignment made and delivered as aforesaid, your petitioner is possessed of all right and interest which said Joseph B. Close, at the date of said decree had possessed, to any capital stock to him belonging in said Glenwood Cemetery Company, or any equitable right to have such
107 stock issued and given to him, or any equitable interest in the lands occupied by or dedicated for use by said cemetery company, or any profits or monies whatever decreed or derived from the use of said lands, and that from said date of said decree, or, at any rate, from the said date of said assignment, said Joseph B. Close ceased to have any interest in said property in any form or in any of the avails thereof, except such as remained after the payment of the sums of money mentioned in said decree, and of the alimony aforesaid.

And your petitioner shows that said Ellen M. Close is still living separate and apart from her said husband, but that nothing has been paid by him, either in discharge of said yearly alimony or of either of the sums of money mentioned in said decree; nor has anything been real-
108 ized in any way through said *said* execution of sequestration or through the receiv*ingtrip* of your petitioner. Said Close's property in New Jersey, except his dwelling-house, consists only of vacant land, utterly unsaleable, and subject to heavy taxes, all remaining unpaid.

And your petitioner has heretofore been informed and supposed that nothing could be had from the Glenwood Cemetery property, and not being in funds to assert his title so far from the State of New Jersey, has foreborne action till this time; but having heard of this suit through the public prints and from third parties, he desires to be admitted defend-

ants in the same, to the end that he may therein assert the rights to him belonging as aforesaid.

And your petitioner will ever pray.

CHARLES BONCHENLING.

WORTHINGTON & HEAL,
Sol'rs for Defendant, Borchenling.

109 *Borchenling.*

DISTRICT OF COLUMBIA, *ss:*

Charles Boruchenling, of Newark, New Jersey, being duly sworn, saith that he is acquainted with the contents of the above petition, and that the statements therein as to his own action and conduct are true, and as to the actions and conduct of other persons, he believes them to be true, and he further saith that the statements in said petition, as to the suit in chancery of New Jersey, the proceedings, decrees, and monies therein, are devised from copies of said records in his possession, and are correctly stated, and that he has in his possession the deed of assignment signed by said Joseph B. Close in said petition referred to.

CHARLES B. BORCHENLING.

Sworn to and subscribed, this 25th day of May, 1878, before me.

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR., *Ass't.*

110 *Order making Borcherling defendant, May* 25, 1878.

GLENWOOD CEMETERY
v.
J. B. CLOSE ET AL. } 5877. Eq. doc. 17.

It is, this 25th day of May, 1878, ordered that the prayer of the within petition be granted, and the petitioner Borcherling be admitted as party defendant.

By the court.

MACARTHUR, *Justice.*

111 *Borcherling's answer to bill filed May* 25, '78.

In the supreme court of the District of Columbia, sitting as a court of equity.

THE GLENWOOD CEMETERY
vs.
JOSEPH B. CLOSE. } In equity.

The answer of Charles Borcherling, admitted as defendant in this suit, to the bill of complaint of The Glenwood Cemetery complainants.

This defendant shows, as he has already shown by his petition praying to be made defendant, filed in this cause, that by virtue of the decrees of the court of chancery of New Jersey, made and dated the third day of November, one thousand eight hundred and seventy-five, and the deed of

assignment made by said Joseph B. Close, under his hand and seal, in furtherance of, and in obedience to said decree, he, this defendant, is possessed, and became on said date of said decree possessed, of the right to all and sundry the personal estate of said Joseph B. Close, wherever
112 situate, and especially of all and sundry the capital stock of the Glenwood Cemetery, in Washington, D. C., and all profits and dividends, or other monies to him coming therefrom, or from any officer thereof, and of all and sundry the rents and profits of his real estate whatsoever and wheresover, and this defendant refers to his said petition for fuller particulars, as to his rights in relation to said cemetery, the usufruct thereof, and its occupation in order to the obtaining such usufruct.

This defendant saith and insists that said Joseph B. Close has no right whatever to possess said cemetery, or the ninety acres of land alleged to be directed to sepulture by the plaintiffs in this said bill; nor has he any right to any interest in the use of said cemetery, or any reward for such use, or to any capital stock issued or to be issued by said corporation plaintiff. All said rights belong to this defendant, and said Close has
113 no right to any pecuniary profit from the use of said ninety acres of land until payment be made of the various sums of money mentioned in the decree, to enforce which said decree of the third of November, one thousand eight hundred and seventy-five, was made and of the alimony of three thousand dollars per annum awarded and decreed to Ellen M. Close.

And this defendant saith that no right whatever was devised *by* Frederick N. Close by *rule* of the deed made to him. As against this defendant, said deed was without consideration. It was given and received in order to defraud creditors. It is void as against said Ellen M. Close, who, by said decree, became a creditor of her said husband, as against her counsel, who are entitled to the sum awarded them by the court of chancery, and as against this defendant, who, as receiver, represents all said
114 debts established by said decree. Besides all which said deed is subsequent in date to the grant by said Joseph B. Close of said rents and profits, as well as to the decree of said court of chancery, which, by its own free, without any deed, transferred said rents and profits, and monies whatsoever derivable from said premises to this defendant.

And this defendant saith that he can make no answer to the various allegations of fact in said bill of complaint contained, having no information or knowledge concerning the same except from the allegations of said bill; and being trustee only for the payment of said debts named in said decree, he is advised that it would be imprudent and improper for him to admit such allegations. All he can say is that he has no knowledge contrary thereto, and he submits to this court what information of law arises upon said facts, if passed as alleged.

115 This defendant is, however, advised that it is his right, if the prayer of said bill of complaint be granted, that said corporation on receiving conveyance of said lands, should such conveyance be decreed, to issue capital stock to the amount of one hundred thousand dollars, and that such capital stock should be issued, not to said Joseph B. Close, but to your petitioner, who alone has, by virtue of the premises, the right to receive and possess the same.

And this defendant denies all unlawful sureties, &c., and humbly prays to be forever dismissed.

CHARLES BORCHELING.

WORTHINGTON & HEALD,
Sol'rs for Def't Borcheling.

116 DISTRICT OF COLUMBIA, *ss:*

Charles Borcheling, the above-named defendant, being duly sworn, saith that the matters in said answer stated on personal knowledge are true, and those stated on information and belief he believes to be true.

CHARLES BORCHELING.

Sworn and subscribed to this 25th day of May, A. D. 1878, before me.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Ass't.*

117 *Cross-bill of Borcherling filed.*

In the supreme court of the District of Columbia, sitting as a court of equity.

CHARLES BORCHERLING, PLAINTIFF, *vs.* JOSEPH B. CLOSE, FREDERICK N. CLOSE, WILLIAM S. HUMPHREYS, R. S. EVANS, GEORGE CLENDENIN, and THE GLENWOOD CEMETERY COMPANY.	In equity. No.

Charles Borcherling, the said plaintiff, files this his bill of complaint by way of cross-bill against the said defendants, the said Joseph B. Close, and Frederick W. Close, being citizens of New Jersey; the said William Humphreys and R. S. Evans, being citizens of New York; the said George Clendenin, a citizen of the District of Columbia, and The Glenwood Cemetery, being a corporation in said District, created by acts of the Congress of the United States, and said plaintiff shows as follows:

118 First. That said The Glenwood Cemetery has filed its bill in this court for relief, touching the matters therein contained against all the said other defendants; that said defendants Joseph B. Close and George Clendenin have filed their answers therein; and that the plaintiff in this suit being interested in the subject-matter and prayer of said bill of complaint so filed by said The Glenwood Cemetery as aforesaid, hath applied to this court, been admitted as a defendant thereto, and also filed his answer to the same, but that he is advised that in order to his full relief it is necessary or advisable that this his cross-bill be exhibited.

Second. And therefore said plaintiff shows that by an order of the court of chancery of the State of New Jersey, in a suit there pending between Ellen M. Close complainant, and said Joseph B. Close defendant, in which suit the said Joseph B. Close duly appeared, argued, and defended,

119 which order was made after decree therein in favor of said complainant granting the prayer by her made in her bill of complaint in said court of chancery exhibited, and which order bears date the third day of November, one thousand eight hundred and seventy-five, he the

said plaintiff was appointed receiver of the personal estate and of the rents and profits of the real estate of said Joseph B. Close, and the said Joseph B. Close was ordered and directed to sign, seal, and deliver to said plaintiff, as such receiver, an assignment of all his right and title to all and every his personal estate wherever situate, and especially to all and sundry the capital stock of the Glenwood Cemetery, and all dividends, profits, or other moneys to him coming therefrom, or from any officer thereof, and to pay all and sundry the rents and profits of his real estate whatsoever and wheresoever.

And the plaintiff further shows, that in obedience to said order, the said Joseph B. Close afterwards, and on the twenty-fourth day of De-
120 cember, one thousand eight hundred and seventy-five, duly signed, sealed, and delivered to your petitioner said assignment so by said order required.

And the plaintiff appends hereto a duly exemplified copy of said proceedings and decree in chancery, including a copy of said order, and of said assignment, the form of which was annexed thereto, and which was duly signed, sealed, and delivered as aforesaid. And he further shows that he, the said plaintiff, made oath according to said order faithfully to perform the duties thereby required of him, and filed the same in said court of chancery.

Third. And said plaintiff saith that by virtue of the premises, he is possessed of all rights, which the said Joseph B. Close has or can have in regard of the said Glenwood Cemetery, whether such rights be as owner of the capital stock of said corporation, or to have such stock issued to him as owner thereof, or whether he be owner of the land dedicated under said
121 name for the purpose of sepulture, and has the right to derive income and profit from the sale of such privilege of sepulture therein, or whether there has been no dedication, and the said Close has the ordinary rights in said land belonging to owners of real estate, or has any other rights in regard of said lands, or any part thereof. All usufruct of said property, whatever its nature, and the rights of possession thereof, in order to the attainment of such usufruct, belongs by virtue of said order, and of said deed of assignment made in furtherance thereof, to the plaintiff herein for the purposes therein expressed.

Fourth. And the plaintiff further shows that said Glenwood Cemetery is a tract of land of about ninety acres, situate in or near the city of Washington, which was on or about July, 1854, wholly or at least to the extent of thirty acres thereof, dedicated by its owners as a public cemetery by being laid out and opened to the public use as such by solemn and appro-
122 priate ceremonies, as well as by publication and other dedicatory acts, which are set forth in said bill of complaint already mentioned and exhibited by said corporation, called the Glenwood Cemetery, which corporation was for the purpose of managing said cemetery about that time duly incorporated. Said Joseph B. Close then was or shortly after became the owner by legal title in fee-simple of the said ninety acres of land so dedicated as aforesaid, and still remains such owner, as this plaintiff is informed and believes, or if not of said legal title, of the equitable interest therein and of the right to possess and acquire all arising from the use of said property for sepulture as aforesaid.

Whether such dedication extends to all the said tract the plaintiff is not

fully informed. It may be that in law (and the plaintiff so avers) such dedication was only upon thirty acres, part thereof, which then was and since has been enclosed, and in which many persons have obtained
123 right of sepulture, and many deceased persons have actually been interred.

The said plaintiff shows and charges that it was the duty of said corporation and of said Joseph B. Close, and the other managers thereof constituted by the act of incorporation, to have issued capital stock according to the requirements of said act to the owners of said lands to the amount of one hundred thousand dollars, on which any profits derived from such use of said lands as a place of sepulture should be paid as dividends.

Whether such duty was performed or not the plaintiff is uncertain.

From information derived from the and declarations heretofore made by said Close and George Clendenin, who claims some interest in the corporation or lands aforesaid, and is therefore made a party hereto, and who has for a long time past been the superintendent of said cemetery and treasurer and manager of the affairs of said company,
124 the plaintiff charges that such capital stock was issued, and that dividend was paid thereon from the profits of the said use of said lands. But, howsoever this may be, the plaintiff charges that said issue of said stock, being such duty as aforesaid, ought by this court to be held and declared to have been done, and that if not actually done the same should now be required.

Sixth. The plaintiff makes the said Frederick N. Close a party defendant to this suit because on or about the tenth day of May, 1877, said Joseph B. Close made and executed a deed conveying to him his interests in the said lands and cemetery, and he may claim title or right by virtue thereof.

But the plaintiff shows that said Frederick is the son of said Joseph, hereby of age when said deed was made—entirely without means—that the deed was without consideration, was a fraud upon all creditors, and
125 especially upon said Ellen M. Close and the other parties interested in said decree in chancery and the plaintiff, who, as such receiver, is their representative, and that the same is and ought to be declared void, which it is at all events, subject to the rights of the plaintiff, and conveys no title as against him.

Seventh. The said plaintiff makes the said Humphreys and Evans parties to this bill because they are or claim to be managers of said corporation, and in some way to bear an interest therein or in said lands dedicated as aforesaid, or in the use thereof.

Eighth. And the plaintiff prays for relief as follows:

First. That said Joseph B. Close (and said Frederick Close, if he claim any interest in said lands) be deemed to convey the said lands to said corporation, or by some deed by them to be executed, alone or together, and to be acknowledged and recorded in the office of registry of the
126 District of Columbia, to make formal declaration that said thirty acres of land already enclosed and used therefor is impressed with the public trust and use created by said dedication, are and forever shall be set apart and dedicated as a public cemetery to be used by said corporation under the said act of incorporation and any acts now existing or hereafter to be passed supplementary thereto.

Second. That said corporation be thereupon required, if no capital stock

has by them been already issued, to issue the same to the amount of one hundred thousand dollars, the scrip or certificates of which stock shall be made out to and delivered to the plaintiff as receiver as aforesaid, to be by him held, used, and enjoyed under the trusts of said receivership.

Third. That said Joseph B. Close and said George Clendenin be decreed to account for and to pay to the plaintiff all profits derived
127 from the use of said premises or dividends upon any stock of said cemetery since the date of said decree of the court of chancery, or the making of said assignment to the plaintiff by said Close.

Fourth. That said plaintiff have such other or further relief as may be equitable and just, and in particular that pending this suit he be put by order of this court in possession of all said premises, to wit, said ninety acres of land; and that said Joseph B. Close and George Clendenin be enjoined from interfering with his possession thereof, or from taking or seeking to take any profits therefrom, whether by sale or letting of burial lots, or otherwise.

Fifth. That if need be all parties having heretofore appeared or been subpœnaed in the suit aforesaid brought by said The Glenwood Cemetery, process of subpœna do issue to the various parties named herein as defendants for their appearance and answer hereto.

CHARLES BORCHERLING.

128 NEW JERSEY,
Essex County, ss:

Charles Borcherling, of Newark, in said county, being duly sworn, saith that he is the plaintiff above named; that he is acquainted with the contents of the above bill of complaint; that the allegations thereof, so far as they relate to his own acts and deeds, are true, and so far as they relate to the acts and deeds of other persons he believes them to be true.

And further saith not.

CHARLES BORCHERLING.

Sworn & subscribed this 31st day of May, 1878, before me.
[SEAL.] WM. H. FRANCIS,
U. S. Com'r Dis. of N. J.

129 *Bill for divorce.—Filed Oct. 19th,* 1870.—PARKER & KEASBY, *Sol's.*

In chancery of New Jersey.

BETWEEN ELLEN M. CLOSE, COMPL'T,
and
JOSEPH B. CLOSE, DEF'T.

To the honorable Abraham O. Zabriskie, chancellor of New Jersey:

In chancery humbly complaining, showeth unto yo'r honor your oratrix, Ellen M. Close, of the city of Bayonne, in the county of Hudson and State of New Jersey, that on the fifth day of January, one thousand eight hundred and forty-six, she was married, then being a resident of the State of Massachusetts, to one Joseph B. Close; said marriage was celebrated at Hopkinton, in said State, by the Rev. Bagley, a stated minister of the gospel there then resident.

That from that date to a very late period your oratrix and her said husband cohabited together as man and wife, for several years in
130 the city of New York, and for about ten years last past at Bayonne aforesaid, upon a farm of about forty acres there situate; and that during said marital life, your oratrix and her said husband became the parents of ten children, nine of whom are still living.

2. That the said children are as follows: Ella, aged twenty-three years; Gertrude, aged nearly twenty-one years; Frederick, aged seventeen years; Mary, aged fifteen years; Joseph, aged thirteen years; Charles, aged eleven years; Annie, aged eight years; Eva, aged six years; Frank, aged four months. Your oratrix lost one child, who if living, would be now two years and a half do. All said children are at present living at home.

And your oratrix further shows unto your honor, that during the said married life she has suffered at various times from the violent and ill-governed temper of her husband, especially when more or less under the influence of liquor, in the use of which he has habitually and increas-
131 ingly indulged, but that of late her situation has been so unhappy and dangerous, that she is no longer able to endure his violent, unjust, abusive, and cruel conduct, and is compelled to resort to this honorable court for protection, and to ask a divorce a mensa et thoro from her said husband, with suitable and reasonable alimony.

3. And your oratrix shows, that on the eighth day of June last, the youngest of said children was born. About two days previously, and when the birth was momentarily expected, the monthly nurse being engaged and in the house, her said husband, without any intentional provocation on the part of your oratrix, fell into the most violent rage with her, called her a whore, bitch, sow, and other like names, accused her of lying, and gathering up his clothing, left their house, which, up to that time, they had occupied together, and declared that he would never again cohabit with her.

After the birth of said child, and after your oratrix had regained her strength sufficiently to resume her ordinary duties, she went
132 down-stairs and again took charge of her family. She went to the dinner-table first upon a Sunday. After dinner her husband came into the parlor where she was sitting and began to scold in respect to other individuals, and then, without any provocation, turned upon your oratrix and loudly, and so that the family, who were mostly within hearing, could hear, abused your oratrix, repeating the epithets above-mentioned, with others of like character, charged her with siding with servants against him, and getting enraged because your oratrix denied the accusation—raised his cane saying, "I'll smash you," and made at your oratrix menacingly, and then seizing her by the arm pushed her forcibly across the room, saying, "Clear out; upstairs with you," or something to that effect, and compelled your oratrix to leave the room and go upstairs.

Several days after, being invited to come to tea, he replied passionately, "I will come when I get ready," and raising his cane struck at her
133 with it and added, "If you dare to have the things removed I will pull the bones out of you." Your oratrix waited for him, and the child crying, she went upstairs to it, leaving word that she should be called for when he came to tea. Her husband came upstairs and meeting your oratrix coming down caught hold of her arm, pushed her partially towards the stairs saying, "Go down—why the hell are you not attending

to me," or something to that effect. All the foregoing was within hearing, and to the knowledge of your oratrix's family.

On other occasions, about the same time, her said husband attacked her with violence in language, insulting her with approbrious epithets, and, seemingly getting infuriate, seized her, pushed, and otherwise assaulted her, and finally struck her with his cane, your oratrix giving no provocation, and there being no reason that she could understand for the violence he used. On one of these occasions, his children interfering, he as-
134 saulted one of them, his daughter, struck and knocked her down.

On or about the third day of September last (A. D. 1870), her said husband came from New York while she and the children were at dinner-table, and immediately entered upon the most violent abuse of your oratrix. He called her whore, sow, liar, bitch, and used other like epithets to her, and told her to immediately go upstairs, get her clothes, and leave his house; he would give ten minutes to do it. Your oratrix went upstairs. He followed her there, reiterated his command; threatened to smash her, hammer her; called her again by the aforesaid names and epithets, and said she must immediately depart from his house forever. Your oratrix refused to go, that day being Saturday, and remained till Monday, her said husband during the interim keeping up the same abuse, threats, and ill-conduct, and on Sunday evening compelled his daughters to pack your oratrix's trunks for her.

Your oratrix on Monday went away and lived with a relative
135 for two weeks and over, during which time her husband sent her no message, nor did he come near her.

About the twentieth of September, by advice of friends, your oratrix returned to make a new effort to live with her husband and enjoy*ing* the comfort of her family. The same day, shortly after she returned, he asked her how she dared to do it; told her to leave again; that she could not stay; he would make the house too hot for her; would give her hell; and used abundance of this harsh, cruel, menacing, and abusive language. Your oratrix, notwithstanding, stayed for nearly a week, during all which time he continued the same course of conduct. On the twenty-fifth day of September aforesaid her said husband renewed his violence, and besides inordinate and infamous abuse, he kicked her four times, pushed her violently, caught her by the throat, and was only prevented from choking her by the intervention of his daughters, and finally drove her out
136 of the house, down the porch steps, and struck her, in the presence of other persons, accompanying his violence with the same character of language.

Your oratrix can adduce other illustrations of the abuse, violence, and cruelty of the said Joseph B. Close towards your oratrix, which has been habitual and extreme; and she charges that he has been guilty, during all the period beginning the first day of January last, and especially during the months of June, July, August, and September last, of extreme cruelty toward your oratrix, habitual and unjustifiable, and such as renders it improper and unsafe for her to continue to live with him as his wife.

And your oratrix shows that the said Joseph B. Close is possessed of real-estate and personal property to a large amount, and that he has stated that he expended during the last year ten thousand dollars for the support of the family.

And she further shows that owing mainly, as aforesaid, to habits
137 of intemperance, said Close is habitually so violent and ungovernable in his temper and conduct towards all the members of his household that he is unfit to have the charge of his said children, and that your oratrix is willing and desirous to take care of them, and prays that they may be committed to her care.

And your oratrix further shows that she is informed and believes and charges that said Close intends leaving the State of New Jersey, in order to escape any suit by your oratrix, and she shows that he has lately published in newspapers printed and circulated in New York City, an advertisement offering his property at Bayonne "for lease for a long term of years on very favorable terms."

In consideration of all which, and that the said Joseph B. Close may answer the premises, and that a decree may be made by this honorable court for a divorce of your oratrix from her said husband from bed and
138 board forever hereafter, and for alimony and maintenance of your oratrix and the said children, and that your honor may make such decree and may take such order touching said alimony and maintenance of your oratrix and touching the care and maintenance of said children respectively as from the circumstances of the parties and the nature of the case may be fit, reasonable, and just, and may order said Joseph B. Close to give reasonable security for such alimony and maintenance, or enforce performance of said decree or order by such lawful ways and means as is usual and according to the statute, or the course or practice of this court; and that your honor should issue the writ commonly called "ne exeat regno," against said Close in order to obtain such security and prevent his defrauding your oratrix by absenting himself from this State and from the jurisdiction of this court; and that your oratrix may have such
139 other relief in the premises as to your honor shall seem meet and agreeable to equity and good conscience.

May it please your honor, the premises considered, to grant unto your oratrix the most gracious writ of subpœna, issued out of and under the seal of this court, to be directed to said Joseph B. Close, therein and thereby commanding him on a certain day and under a certain penalty therein to be mentioned, to appear before your honor in this honorable court then and there to answer the premises, and stand to, abide by, and perform such decree therein as to your honor shall seem meet and agreeable to equity and good conscience; and your oratrix, as in duty bound, will ever pray, &c.

PARKER AND KEASBEY,
Solicitors and of Counsel with Complainant.
CORTLANDT PARKER,
Of Counsel with Complainant.

ESSEX COUNTY, *ss:*

Ellen M. Close, the above-named complainant, being duly sworn,
140 saith that she is acquainted with the contents of the above bill of complaint, and that said complaint is not made by any collusion between herself and Joseph B. Close, the defendant therein, for the purpose of dissolving their marriage, but in truth and good faith for the causes set forth therein.

ELLEN M. CLOSE.

Sworn and subscribed, this 15th day of October, A. D. 1870, before me.
JNO. LINN,
Master in Chancery, N. J.

Answer, &c.—Filed Dec. 28, 1870.

The answer of Joseph B. Close to the bill of complaint of Ellen M. Close, complainant.

This defendant, now and at all times hereafter, reserving to himself all manner of benefit and advantage of exception to the many imperfections, uncertainties, and defects in the complainant's said bill of complaint
141 contained, for answer thereunto, or unto so much and such parts thereof as he is advised is material and necessary for him to make answer unto, he answers and says that it is true, as stated in said bill of complaint, that he was lawfully married to the said complainant on the fifth day of January, one thousand eight hundred and forty-six, and that from that time to a very late period, this defendant and said complainant have continued to cohabit together as man and wife, the first fourteen or fifteen years in the city of New York, and the last ten years at Centerville, now a part of the city of Bayonne, in the county of Hudson and State of New Jersey, as alleged in said bill of complaint, where he still resides with his family; that during said marital life, the said complainant became the mother of ten children, nine of whom are still living, and aged, respectively, as alleged in the complainant's said bill of complaint, all of whom, except Frank, the youngest, aged about six months, who is now with his mother, the said complainant, in the city of New York, reside at
142 home with this defendant, in the city of Bayonne aforesaid, and are supported and cared for by this defendant.

And this defendant, further answering, denies that during said married life, she, the said complainant, has suffered at various times from the violent and ill-governed temper of this defendant, or that he has ever, during said time, been in the habit of using intoxicating liquors to excess, or that her situation has, in any way, been rendered unhappy or dangerous by any habit, act, or deed of this defendant; but he avers that she, the said complainant, has not conducted or demeaned herself towards this defendant as a dutiful and affectionate wife, but on the contrary, by the indulgence of a violent and ill-governed temper, has imbittered his life; and by her improper and unbecoming conduct towards strange men, especially during the last five or six years of said marital life, has rendered the life of this defendant very unhappy, and frequently made it necessary and
143 proper for him to remonstrate with her, the said complainant, against such improper and unbecoming conduct, and to advise her to desist from a continuance of the same.

And this defendant, further answering, says that if the life of the said complainant has ever been rendered the any way unhappy during said marital life, such unhappiness has been the consequence of her own improper, unbecoming, undutiful, and unaffectionate conduct towards this defendant, and not of any act or conduct on his part.

And this defendant, further answering, saith that for several years pre-

vious to coming from the city of New York to Bayonne aforesaid, and at the time of coming to the city of Bayonne, that is to say, in the year eighteen hundred and sixty, he had allowed his said wife, the complainant, the sum of three hundred and fifty dollars per annum for spending
144 or pin money, besides providing her with every other necessary thing for her comfort and support; and generally increased said allowance to double that amount in the way of presents; that during the year last aforesaid he had made her presents amounting in value to the sum of three or four hundred dollars, and that about a month previous to the expiration of the year she had spent all her allowance, and desired this defendant to make advances on her allowance for the ensuing year, which he refused to do, and remonstrated with her for being so extravagant, telling her he had a large family of children to provide for and educate, and that it was necessary and proper for her to exercise more prudence and economy, as his income was very small, though he owned considerable property, and his expenses were necessarily large; that on coming home the following evening, he found her sullen, and morose, and
145 not disposed to be friendly; that from that time forward for a long time then ensuing she refused to allow him to exercise his marital rights with her person unless he would give her five dollars every time. Feeling that such a position was a very improper one for a dutiful and affectionate wife towards her husband, to *her* demands, he refused to continue the yearly allowance of pin money, but told her he would provide her with everything that was necessary and proper for her comfort and support in her position in society, which he avers he has always done up to the time of her leaving his home, in October last; and that from the time of his said refusal to continue said allowance of pin money, up till the time of her leaving his home aforesaid, she has almost daily importuned him to resume said allowance, and has availed herself of every trivial occasion to quarrel with him, repeatedly threatening him that
146 if he would not accede to her desires in that respect she would institute proceedings for divorce and alimony against him; and boasted that she would yet have more than that out of him; that she would yet live in a fine house on Fifth avenue, in the city of New York, and drive her coach; that she would make his money fly yet; and has, as this defendant charges and insists, continually from that time forward till the time of her leaving his home, connived at, and attempted to incite and provoke him to commit some act of personal violence against her in order that she might be able to carry her threats into execution.

And this defendant, further answering, saith that the conduct and demeanor of the said complainant, in other respects than those above stated, during the last five or six years, hath been such as to render it proper and necessary for him frequently to remonstrate with her in strong terms
147 against such conduct, and advise her to desist from such improper conduct and deport herself as became a dutiful and affectionate wife; that when he moved with his family from the city of New York to Bayonne aforesaid, he had employed a music teacher by the name of Lehr, to teach his daughters music, who continued to come down to the city of Bayonne once or twice a week for several years for the purpose aforesaid, and generally staying to dinner; that about the month of August, in the year eighteen hundred and sixty-five, he, said Lehr, one

day, as usual, staid to dinner, and after the family were all seated around the dinner-table, and before any of them had been helped, this defendant arose and went down-stairs after a bottle of beer, and when he returned found said Lehr helped to the tenderloin of the steak, and Mrs. Close and all the rest of the family in their proper places about the table un-
148 helped. After dinner he requested his said wife to tell him how it happened that Mr. Lehr had been helped in such a strange and exceptionable manner, when, to his great surprise, she informed him that she had done it; and when he remonstrated with her upon the impropriety of such conduct towards a strange man, the only excuse she would give him was that he generally helped her to that part of the steak and that she did not want it. Shortly after this he found in her possession a package of coverings for a man's private parts, to be used in the act of copulation to prevent the impregnation of the woman, and took them and burnt them, and demanded from her an explanation of the possession of such things, which she refused to give; and about the same time he also learned the said Lehr had, with the knowledge of his said wife, the complainant, been attempting to seduce one of his daughters by his first wife in defendant's own house, which she, the said complainant, care-
149 fully concealed from this defendant, and assigned as a reason for so doing that he, said Lehr, had requested her to do so; all of which conduct on the part of the said complainant this defendant admits enraged him very much, and caused him frequently to remonstrate with her in strong language, and protest against that and similar conduct on her part, which remonstrances not unfrequently led to quarrels and altercations between them, on which occasions she, the said complainant, would insult and tantalize this defendant in every conceivable manner, accuse him of improper intercourse with his women servants, in the presence of his family, and, *and* sometimes, of visiting friends; would call him a liar, coward, and other like names, come up close to him, shake her fist in his face, dare him to strike her or touch her, and say that was all she wanted, that then she would have a divorce from him, and on several
150 occasions seized him around the neck with one hand and by the hair of the head with the other, at the same time kicking and trying to bite him. And this defendant charges and insists that if any violence was ever used by this defendant towards her it was only to rid himself of her when she would thus attack him, and then only as much as was necessary for that purpose.

And this defendant, further answering, saith, that immediately after his taking exception to said complainant's demeanor towards said Lehr, the finding of said coverings for males, said Lehr (though this defendant had not seen him or had any communication with him about said matters, and at the time owed him some money for his services, for which he has never called) immediately discontinued coming to this defendant's house, and has never to this defendant's house since, and that imme-
151 diately thereafter the said complainant commenced to make visits to New York City once or twice a week, leaving in the morning, and saying that she might stay overnight, and always staying from one to two nights, when she returned saying she had been on a visit at her uncle's, or one Mr. Banks; which visits she continued to make regularly up to the time she left this defendant's home in October last; and during said

time became pregnant three times, destroying the fœtus each time by means of medicines; on two of which occasions this defendant could not account for her pregnancy by his intercourse with her; against this improper and unnatural conduct this defendant frequently protested, which led to quarrels between the said complainant and this defendant, she justifying her improper and unnatural conduct, and persisting in a continuance of it.

And this defendant charges and insist' that if he has at any time
152 made use of harsh, coarse, vulgar epithets towards the said complainant, it has been when enraged and vexed beyond endurance at such improper and unbecoming conduct on the part of the said complainant, and when she would neither listen to reason or remonstrance against the same, and expressly charges and insists that it was right and proper for him to use every reasonable means to restrain said complainant from such improper conduct.

And this defendant, further answering, saith, that from the aforementioned conduct of the said complainant his suspicions were finally aroused as to her faithfulness to her marriage vows and his bed, and that about the month of January last past he inquired of her uncle and Mr. Banks, where she generally said she had been visiting when she staid overnight away from home, and learned from them that she had never staid
153 at either of their houses on such occasions; and when he stated this fact to her, and demanded to know where she had staid on such occasions, she, in a very insulting manner, told him it was none of his business, and left him abruptly, without any explanation.

And this defendant, further answering, saith that whenever he would attempt to reason with the said complainant about such improper and unbecoming conduct and practices, she would either abruptly leave him or seemingly become greatly enraged and express her determination to persist in them; would call him an old liar, old fool, and other like names, and tantalize him in every conceivable manner by running up to him as though she were going to strike him; shake her fist in his face, say she was not afraid of him, call him a coward, and dare him to strike her or lay his hands on her, and threaten him with a suit for divorce
154 and alimony if he would not give her a sufficient allowance to enable her and her children to leave him and go and live in the city of New York; all of which conduct on the part of the said complainant this defendant expressly charges was intended by her, and done by her for the express purpose of aggravating him to strike her, or do her some bodily injury for the purpose of l'ying a foundation for this suit for divorce against him.

13. And this defendant, further answering, saith that about the month of August last past, in order to get rid of the unfounded charge which the said complainant continually brought against him, namely, of having improper intercourse with his servant girls, and with the hopes of restoring harmony and amicable relations between himself and his said wife, he discharge' all of his servant girls, one of whom had been in his
155 family nine years and another four, and directed her to hire new servants to suit herself, and then proposed to the said complainant that they resume their former relations and cohabit (which they had not done for about two months previously) as man and wife—should forget the past and demean themselves towards each other in a proper and be-

coming manner, which she absolutely refused to do, and immediately after went on one of her usual visits to the city of New York, leaving a young widow woman in charge of the house, who during the absence of said complainant seemed very desirous of becoming intimate with this defendant, and behaved herself in so improper a manner by coming into the bath-room when he was in a nude state, and finally making improper proposals to him, that he was compelled to discharge her, and that
156 when the said complainant returned from the city of New York she seemed very desirous of knowing the reason why this defendant discharged said woman, and importuned him for several days to tell her, which he finally did, and being convinced from the manner and conduct of the said complainant that it had been arranged between the said complainant and the said widow woman for her (the said widow) to inveigle him into committing adultery with her (the said widow) for the purpose of enabling the said complainant to procure a divorce from him, he so charged the said complainant, which she did not deny, and he now expressly charges that she so conspired with said widow woman to inveigle this defendant into committing adultery with said widow, in order to enable her, the said complainant, to procure a divorce from him.

157 And this defendant, further answering, admits, that about ten days previous to the birth of complainant's last child, and when the birth of said child was momentarily expected, he left the room of the said complainant, but denies that he fell into a violent rage, called her a whore, bitch, sow, and other like names, or that he left her room and declared that he would never again cohabit with her, but avers that the reason he left the room of the said complainant at the time referred to was, because he was at the time very much afflicted with rheumatism, with which complaint he has suffered more or less for a number of years last past, and at times very severely, compelling him to use one and sometimes two canes for support in walking; that at said time he was suffering great pain, and was unable to give her that care and attention which she might require,
158 and therefore left her room and procured the nurse who was already engaged and in the house, to occupy the room with her in order that she might have such care and attention as under the circumstances she might require.

And this defendant, further answering, denies, that on a Sunday shortly after the birth of the last child or at any other time, he went into the parlor after dinner and commenced to quarrel with the said complainant, and used coarse and vulgar epithets towards her, threatened to strike her, or do her any bodily harm, or that he seized her by the arm and pushed her forcibly across the room, but admits that on the occasion referred to, he was scolding and finding fault about some of the servants having disobeyed his orders, and charges that the complainant, as usual with her, availed herself of the opportunity to insult, tantalize, and provoke him by siding
159 with the servants against this defendant, and saying he should not blame them, that he thought more of them than he did of her, and finally calling him an old liar, dog, and fool, and charging him with intimacy and improper intercourse with the female servants, and that thereupon he said to her, it was very strange that in every little difficulty he had with the servants or any one about the house, she always arranged herself against him, seemed never satisfied unless picking a quarrel with him,

and making it the occasion for a reiteration of her usual false and ungrounded charge against him of having improper intercourse with the female servants; that she thereupon repeated the epithets and charge above stated against him, in a violent, insulting, and tantalizing manner, whereupon this defendant laid his hand gently upon her shoulder and told her that
160 if she could not behave herself differently she had better go upstairs.

And this defendant, further answering, denies that at any time when invited to come to tea he threatened to pull the bones out of her, the said complainant, or do her any bodily harm if she dared to have the things removed from the table, or that he used any violence towards her, but insists and charges that at the time referred to he was lame and suffering from rheumatism, and had applied to her several times to bring him some warm water to bathe his feet and limbs, and flannels to bind them in, which she had neglected to do, and that when she called him he was engaged in applying remidies to his feet and limbs, and told her he would come as soon as he could get ready; that thereupon she became violent and declared she would have the things removed from the table, and if he wanted any supper he would have to get it himself.

161 And this defendant, further answering, denies that on other occasions than those already referred to he became infuriate, seized the complainant, pushed, or otherwise assaulted her, or struck her with his cane, and that on one of those occasions, after assaulting and striking the said complainant, he assaulted and struck one of his daughters and knocked her down, but expressly charges that she, the said complainant, with the design of laying a foundation for a suit for divorce, has, at different times during the past five years, connived at and attempted to provoke him to strike her or commit some act of personal violence upon her, which would give her a plausable reason to allege cruelty against him, and on the occasion referred to in said bill of complaint, without any cause or provocation on the part of this defendant, the said complainant became seemingly greatly enraged, and ran up to him and shook her fist in his face,
162 again charged him with improper intercourse with the female servants, dared him to strike or touch her; said she was not afraid of him, and only wished he would strike her or touch her, as that was just what she wanted, all of which took place in the dining-room in the presence of some of the servants and in the hearing of all, and when this defendant remonstrated with her about the impropriety of such conduct, and requested her to go upstairs and not be brawling and conducting herself in such an improper manner in the presence of her servants and family, she replied that she would not go for him, and that he could not make her, and dared him to attempt it, and again ran up close to him and shook her fist in his face, and dared him to touch her or attempt to make her go up stairs; that thereupon he seized her around the waist with one arm and carried her about half way up the first flight of stairs, she kicking
163 and screaming, and striking him all the while in the face, when one of his daughters interfered, and in the struggle on the stairs, in some way unknown to this defendant, his said daughter lost her balance and fell or slipped part of the way down the stairs.

And this defendant, further answering, denies that on or about the third day of September last, at the dinner table, or at any other time or place,

he used the epithets towards the said complainant imputed to him in said bill of complaint, or any similar epithets, or that he ordered her to leave his house, or threatened to strike her or use any violence towards her, but on the contrary charges that soon after coming home from New York on the occasion referred to, she began, as was her custom, to importune him about granting her an allowance so that she might leave him and go to live in the city of New York, and threatening him with a suit for divorce if he would not accede to her request, keeping up such importun-
164 ing and repeating her threats at the table in the presence of his large family of children until he became vexed and told her she could leave if she wanted to do so as soon as she pleased; could pack her things and leave in ten minutes if she so desired, but grant her an allowance he never would; she could commence her long-threatened divorce suit as soon as she pleased. And this defendant, further answering, denies that on the following Sunday evening, after the time last mentioned, or at any other time, he compelled his daughters to pack the said complainant's trunks in order that she might leave on Monday following, but admits that he told them if their mother desired them to help her they might do so.

And this defendant, further answering, saith that the difficulty referred to by the said complainant in her said bill of complaint as having
165 taken place on the third and fourth days of September last past was a remonstrance on the part of this defendant with the said complainant against her having gone to the city of New York, or some other place unknown to this defendant, and staid three successive days and two nights away from her home and suckling infant about three months old, leaving it in the care of her daughters, and refusing to assign any reason for such conduct or inform this defendant where she had been or what her business was, but on the contrary telling him it was none of his business, that she would do so again and as often as she pleased. Whereupon this defendant became very much enraged and excited, and for the time being lost the control of his temper, and admits that under the excitement of the moment he made use of harsh language, such as he would not have used in cooler moments and under circumstances less provoking. but denies that he used any violence towards said complainant, or did her
166 any bodily injury or threatened to do her any.

And this defendant, further answering, saith that when the said complainant returned from the city of New York, about the twentieth of September last, where she had been staying with a relative about three weeks, she informed him she had been on a visit, but this defendant shows unto your honor that he has been informed and believes, and therefore charges it to be true, that when she went away from his house it was with the intention of leaving him and instituting a suit for divorce and alimony in this honorable court against him, but that she was advised that she had not sufficient grounds to enable her to succeed in such a suit, and that she had better return to her home; and this defendant expressly charges
167 and insists that she at the time aforesaid returned to her home for the purpose and with the intention of insulting, abusing, and aggravating this defendant until she should succeed in provoking him in a moment of irritation to use some violence towards her that would enable her to procure a divorce and alimony.

And this defendant, further answering, saith that when he learned that the said complainant, during her said visit to the city of New York, had purchased goods on his credit to the amount of nearly three thousand dollars, and had not brought or sent home any of the goods so purchased, either for her own use or that of her family, but had the same sent to the houses and stores of her relatives and acquaintances in the city of New York and there stored, he was very angry with her, and protested against her conduct in strong terms, telling her he had always provided
168 both her and his family with everything necessary and proper for their comfort and support to an extent even beyond his means, and when he demanded to know why she persisted in her improper and unbecoming conduct towards him, she became seemingly enraged, called him a liar and an old fool, and other approbrious epithets, boasted that she would yet have all the money she wanted out of him, and finally ordered him out of his own house, and actually seized hold of him and attempted to push him out of the door, as they at the time were standing near it, when he caught hold of her and pushed her out, saying, "You go first," at the same time walking out himself and taking a seat on the stoop, she immediately returning in the house; but this defendant denies that he
169 kicked or struck the said complainant or used any violence towards her or threatened to do her any bodily harm.

And this defendant, further answering, saith that he has been informed and believes, and therefore charges it to be true, that the said complainant purchased the goods above referred to in such unusual quantities that she might sell and dispose of the same for her own use.

All of which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WINFIELD & McLEAN,
Solicitors of Def't.
C. H. WINFIELD,
Of Counsel with Def't.

170 *Replication.—Filed Feb'y* 10, 1871.

This repliant, saving and reserving to herself all and all manner of advantage of exception to the manifold insufficiences of the answer of the said Joseph B. Close, defendan therein, for replication thereunto says that she will aver and maintain and prove her said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material and effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true to the knowledge and belief of this repliant. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall
171 direct, and humbly prays as in and by her said bill she hath already prayed.

PARKER AND KEASBEY,
Solicitors, and of Counsel with the Complainant.

172 *Appeal.—Filed Feb'y* 18, 1874.

The complainant hereby appeals from the final decree made in this court in the above-stated cause and so much thereof as declares that the said complainant is not entitled to the relief sought and prayed for by her in her bill of complaint in this cause, and that her said bill should be, and was thereby, dismissed to the court of errors and appeals in the last resort in all causes at law.

Dated February 18th, 1874.

PARKER AND KEASBEY,
Solicitors of Complainant.

I conceive there is good cause for appeal in the above stated cause.

CORTLANDT PARKER,
Of Counsel with the Complainant.

173 *Decree of dismissal.—Filed March* 12, 1874.

This cause coming on to be heard at the last regular term of the court of chancery, held at the State house, in the city of Trenton, before the chancellor, in the presence of Courtlandt Parker, esq., of counsel with the complainant, and Charles H. Winfield, esq., of counsel with the defendant, and the pleadings, depositions, exhibits, and proofs being read, and the arguments of the respective counsel being heard and considered, and the chancellor having taken time to advise thereon, and now, on this twelfth day of March in the year one thousand eight hundred and seventy-four, it appearing to the chancellor that the complainant is not entitled to the relief sought and prayed for by her in her said bill of complaint, it is ordered, adjudged, and decreed that the complainant's bill be and the same is hereby dismissed.

And it is further ordered that the taxed costs of the said com-
174 plainant be paid by the said defendant; and notice having been given to the court by counsel that the complainant intends to appeal from the said decree of dismissal, it is further ordered, that the defendant continue payment of alimony as heretofore ordered in this cause, such alimony not to be paid if said appeal be not taken within fifteen days herefrom, nor to be continued after the last day of the next June term of the court of errors and appeals or after the previous affirmation of this decree if such affirmance be made.

THEODORE RUNYON, *C.*

175 *Decree of Remittitur.—Filed July* 13, 1874.

This cause coming on to be heard at the present term of this court, and having been duly argued by R. Wayne Parker and Cortlandt Parker, of counsel for the complainant below, appellant in this cause, and Charles H. Winfield and Benjamin Williamson, of counsel for the defendant below, appellee in this cause, and the court having duly considered the same, it is now, on this eighth day of July, one thousand eight hundred and seventy-four, decreed by the court that the decree of the court of chancery be reversed; that the defendant, Joseph B. Close, has been guilty upon the pleadings and proofs in this cause of extreme cruelty towards his wife, the said

complainant, and that she is entitled to a decree of perpetual divorce, a mensa et thoro, with reasonable alimony, together with the costs of this suit in this court and the court below and reasonable counsel fees,
176 so far as not already allowed and paid in both courts, to be determined by the chancellor, and that the record and proceedings be remitted to the court of chancery to be there proceeded with according to law and the decree of this court.

On motion of Courtlandt Parker, sol'r, and of counsel with appellant.

STATE OF NEW JERSEY:

I, Henry C. Kelsey, secretary of state of the State of New Jersey and ex officio clerk of the court of errors and appeals in the last resort in all causes, &c., do hereby certify the foregoing to be a true copy of an order made in the above-stated cause, as the same is taken from and compared with the minutes of said court.

In witness whereof I have hereunto set my hand and affixed my official seal this eleventh day of July, A. D. 1874.

[SEAL.] HENRY C. KELSEY.

177 *Decree, &c.—Filed July* 20, 1874.

The proceedings in this cause, having been duly remitted to this court by the court of errors and appeals, in the last resort in all causes, &c., together with the decree of said court made therein, and it appearing thereby that the said court hath reversed the decree heretofore made by this court in this cause, in the matters in regard to which appeal was taken, and hath decreed that the said complainant and defendant be perpetually divorced, a mensa et thoro, and that the said complainant is entitled to reasonable alimony and maintenance to be paid by said defendant, and further that said defendant do pay the costs of this suit, and of the appeal aforesaid, to be taxed, together with reasonable counsel fees for the counsel of said complainant, and that the said court further decreed that their said decree and all proceedings in the said cause should be remitted to this court, to be proceeded with according to law and the directions in
178 said decree of said court of errors and appeals made; and it further appearing that due notice of settling this decree has been given to the solicitor for defendant, and the chancellor having heard counsel thereon, it is now, on this twentieth day of July, one thousand eight hundred and seventy-four, on motion of Parker and Keasby, solicitors of said complainant, ordered, adjudged, and decreed that the said complainant is entitled to the relief prayed for by her said bill, and that she be perpetually divorced as aforesaid, from the defendant, her said husband, a mensa et thoro, and that it be referred to the vice-chancellor to enquire and report what sum should be allowed to said complainant for her reasonable alimony and maintenance, as prayed for by her bill of complaint, and as to which of the parties should have the custody of their minor children, and under what terms and regulations, if any, as to the rights and privileges of the other party, and what sum should be paid and allowed as and for
179 reasonable counsel fees to said complainant, and that he make such report with all convenient speed. And all other equities are reserved until the coming in of such report. It is further ordered that the

testimony already taken on the motion for the alimony heretofore ordered be taken and considered on the reference hereby directed.

THEODORE RUNYON, *C.*

180 *Order.—Filed July* 20, 1874.

Application being made for an order that the defendant, Joseph B. Close, do show cause why he should not be attached for contempt, for disobedience of the order made in this cause, for the payment of alimony pendente lite, and a decree having been made this day, referring kindred matters to the vice-chancellor, it is ordered on this twentieth day of July, one thousand eight hundred and seventy-four, that the hearing of this motion be likewise referred to the vice-chancellor, Amzii Dodd, esquire, for his determination and report.

THEODORE RUNYON, *C.*

181 *Decree.—Filed Jan.* 29, 1875.

This cause coming on to be heard before the vice-chancellor, to whom the same has been duly referred by orders heretofore made by the chancellor in the presence of Cortlandt Parker, of counsel for complainant, and Charles H. Winfield, of counsel for defendant, and the evidence having been taken and the arguments of counsel heard thereon, and the vice-chancellor having advised as hereinafter decreed:

It is, on this twenty-ninth day of January, one thousand eight hundred and seventy-five, on motion of Parker and Keasbey, solicitors for and of counsel for complainant, ordered, adjudged, and decreed that the exclusive control, possession, and custody of Anna, Eva, and Frank, infant children of said complainant and defendant, be given and committed to said complainant, subject, notwithstanding, to the right of said defend-
182 ant to receive visits from his said children for a space of time not to exceed three hours in the afternoon of Saturday in each week, at any residence he may have in the county of Hudson and State of New Jersey, and it is hereby decreed, that said complainant shall do all things necessary to afford to said defendant the enjoyment of such right (whenever by him requested). And it is further ordered, adjudged, and decreed, that the said defendant, Joseph M. Close, do pay to the complainant, Ellen M. Close, or to her order, during her natural life, or until the further order of this court to the contrary, the annual sum of three thousand dollars, in twelve equal monthly installments, each payable on the second Monday of every month, the first of such payments to be made on the second Monday of February, one thousand eight hundred and seventy-five, the same being considered and deemed a suitable allowance, having regard to the circumstances of the parties, respectively, for the sup-
183 port and maintenance of said complainant, and to be used by her for the support, maintenance, and education of said minor children, and she is hereby directed out of the same to make necessary provision for such support, maintenance, and education.

And it is further ordered, adjudged, and decreed that the said allowance is made instead and place of the alimony pendente lite heretofore ordered in this case, which continued until the said second Monday in February, one thousand eight hundred and seventy-five; and it appearing that there is

now due to said complainant arrears of said alimony to an amount which, with allowance at the same rate heretofore ordered, until said second Monday in February, will make it all the sum of twelve hunded and twenty-five dollars; it is therefore ordered that said defendant do pay to said complainant, or to her order, on said day, the said sum of twelve
184 hundred and twenty-five dollars, as and for said arrears of alimony already ordered, and for further alimony up to the time of the said allowance as aforesaid.

And it is further ordered, adjudged, and decreed that said defendant do further pay to said complainant or her solicitors, on the second Monday in February, one thousand eight hundred and seventy-five, the unpaid cost in this case now taxed and to be taxed, and also the sum of thirteen hundred and seventy-eight dollars, which is hereby adjudged and deemed to be the reasonable counsel fee of and for the counsel of said complainant.

And it is further ordered, adjudged, and decreed that the said defendant, Joseph B. Close, do, within ten days after service upon him or his solicitors of a copy of this decree, give such reasonable security for the payment of said annual sum of three thousand dollars, as shall be
185 approved of by the vice-chancellor, for the punctual payment of such sum at the time above specified; and upon his neglect or refusal to give said reasonable security as shall be required by said vice-chancellor, within the time so specified, or upon his default and that of his surety, in case such surety shall be given to pay such annual sum at the time when the same may fall due, according to this decree as above mentioned, that the complainant be at liberty to apply to this court to award and issue process for the immediate sequestration of the defendant's personal estate, and the rents and profits of his real estate, and to appoint a receiver thereof according to the statute in such case made and provided, or such other process as this court may, under the circumstances, deem equitable and just, and may be consistent with the power and authority of this court. And it is further ordered, adjudged, and decreed that this decree shall, from
186 the date thereof, be a lien upon the personal and the real estate of the said defendant in the State of New Jersey, and that a copy thereof be forthwith served upon said defendant or his solicitors, and that either party be at liberty to apply upon a future change of circumstances in the parties, or either of them, for such variation or modification of this order and decree, touching the allowance for alimony and maintenance, and for the support and education, care, and clothing of said children, as under such future circumstances may be just and equitable.

And it is further ordered, adjudged, and decreed that the said complainant have execution according to the course and practice of this court for the recovery of said costs, counsel fees and alimony awarded up to the second day of February, one thousand eight hundred and seventy-five, or for such parts thereof as shall remain unpaid.

And whereas the estate of said defendant appears by the testi-
187 mony taken largely to consist of unimproved real estate in said city of Bayonne, in the county of Hudson, the sale of which it is alleged on the part of the defendant, has been prevented by the necessity of the release by said complainant of her dower right therein, and the said complainant hath alleged her readiness to release said dower right on any bona fide sale for reasonable price, of any part of said real estate, it is therefore, with the

assent of said complainant, further ordered, adjudged, and decreed that the said defendant shall be at liberty from time, to time, at his discretion, to make sale of any part of real estate and report the same to this court, to the end that it may be seen whether such sale is for a reasonable price and on reasonable terms, and that the rights of the complainant to the value of her dower therein, and otherwise may be protected.

And it is ordered that on such sales being approved by this court,
188 the said complainant shall seal, deliver, and acknowledge a release of her right of dower in the lands so sold according to the assent by by her given as aforesaid.

THEODORE RUNYON, *C.*

I respectfully advise the above decree.

AMZI DODD, *V. C.*

JANUARY 29, 1875.

189 *Notice of appeal.—Filed Feb'y* 23, 1875.

The defendant hereby appeals from so much of the final decree made in this court in the above-stated cause, as allows the complainant three thousand dollars per year as alimony during her natural life, in twelve equal monthly instalments; and as gives into the exclusive control, possession, and custody of the complainant, the three infant children of the defendant, named Anna, Eva, and Frank; and as allows to the complainant's solicitors the sum of thirteen hundred and sixty-eight dollars as counsel fees; and as orders, adjudges, and decrees that said decree shall from the date thereof be a lien on the personal and real estate of said defendant, in the State of New Jersey, and as adjudges and decrees that the complainant have execution for the recovery of her costs, counsel fees, and alimony awarded up to the second day of February, eighteen hundred and
190 seventy-five; and also from so much of said decree as decrees in favor of the complainant and against the defendant.

C. H. WINFIELD,
Solicitor and of counsel with defendant.

Dated February 23rd, 1875.

I conceive there is good cause for appeal in the above stated cause.

C. H. WINFIFLD,
Of counsel with def't.

191 *Decree of remittitur.—Filed July* 13, 1878.

This cause came on to be heard at the present term, and was discussed before the court by Charles H. Winfield, esq., of counsel for the appellant, and Cortlandt Parker, of counsel for the appellee, and the court having duly considered the same, it is now ordered and decreed that the decree of the court of chancery rendered in this cause, and from which appeal was taken, be in all things affirmed, and that the record and proceedings be remitted to the court of chancery, to be there proceeded with according to law. It is further ordered that the appellant, defendant below, do pay the costs of the appellee in this court to be taxed, and also such sums as the court of chancery shall award as counsel fees for the counsel of said appellee in this court.

M. B., *C. J.*

192 STATE OF NEW JERSEY,
Department of State:

I, Henry C. Kelsey, secretary of state of the State of New Jersey, and ex officio clerk of the court of errors and appeals in the last resort in all causes, do hereby certify that the foregoing is a true copy of the decree in the above-stated cause, as the same is taken from and compared with the minutes of said court, and now remaining of record in my office.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Trenton, this first day of June, A. D. 1878.

[SEAL.] HENRY C. KELSEY,
Secretary of State.

193 *Order of sequestration, &c.—Filed Nov. 3d, 1875.*

This matter coming before the court on the petition of the said Ellen M. Close and the affidavit thereto annexed, and it appearing that service of each of the decrees made in this cause, the first upon the twenty-ninth day of January, one thousand eight hundred and seventy-five, which, on appeal by said Joseph B. Close, was affirmed by the court of errors and appeals in the last resort, &c., and the other made upon the twenty-seventh day of July, one thousand eight hundred and seventy-five, after the record and proceedings in the cause were remitted to this court, had been duly made upon the defendant, by delivery of a copy thereof respectively to his solicitor more than sixty days since; that said service of said last-mentioned decree was accompanied by a demand, in writing, duly served as aforesaid, of the performance of all matters decreed by the first-
194 mentioned decree and notice; that failing the same for the space of ten days thereafter, application would be made to the chancellor for attachment and other relief; and that, notwithstanding said Joseph B. Close had in no wise performed any of the directions of said decrees or either of them, it is thereupon, on this third day of November, one thousand eight hundred and seventy-five, ordered and decreed that execution do immediately issue against the goods and chattels, lands and tenements of said Joseph B. Close for the recovery of the alimony in arrears and due on the first Monday in February, one thousand eight hundred and seventy-five, and of the costs and counsel fees in said decrees respectively mentioned; and it is further ordered that process do issue for the immediate sequestration of the personal estate and of the rents and profits of the real estate of said Joseph B. Close, and that Charles Borcher-
195 ling, junior, be appointed receiver thereof; and it is further ordered that forthwith upon the service upon him, the said Joseph B. Close, of a duly certified copy of this decree, he do forthwith sign, seal, and deliver unto said receiver an assignment of all his right and title to all and every his personal estate wherever situate, and especially to all and sundry the capital stock of the Glenwood Cemetery, and all dividends, profits, or other monies to him arising therefrom, or from any officer thereof, and to all and sundry the rents and profits of his real estate whatsoever and wheresoever.

And it is ordered that such assignment to said receiver be made after the form of assignment hereto annexed.

It is further ordered that said receiver do proceed forthwith to take

possession of all said personal estate and rents and profits, and do apply the same, after defraying necessary expenses and charges, first to
196 the payment of the alimony of three thousand dollars per annum, fixed and ordered by said decree of the twenty-ninth day of January, one thousand eight hundred and seventy-five, so far as the same has accrued and shall hereafter accrue; then to the payment and discharge of the alimony pendente lite in arrear, mentioned and ordered to be paid by said decree, and of the costs and counsel fees mentioned in said decrees respectively, unless the same shall be paid or raised under the execution hereby ordered.

And it is further ordered that any monies received by said receiver over and beyond what shall be necessary for the payments aforesaid as they shall from time become due, be paid to Joseph B. Close. And the said receiver is required, before entering upon the discharge of his duties under this order, to make oath faithfully to perform the same, and to make report, at least once in three months, of his proceedings in the premises.

THEODORE RUNYON, *C.*

197 I respectfully advise the chancellor to sign the above decree.
November 3, 1875.

AMZI DODD, *S. M. C.*

198 Know all men by these presents, that I, Joseph B. Close, of the county of Hudson, New Jersey, in obedience to the order of the court of chancery of said State, and in consideration of one dollar to me paid, do hereby bargain, sell, assign, transfer, and set over unto Charles Borcherling, junior, appointed by said court receiver of my personal estate, and of the rents and profits of my real estate, all and sundry my said personal estate wherever situate, and especially all and sundry the capital stock of the Glenwood Cemetery, in Washington, D. C., and all profits, dividends, or other monies to me arising therefrom or from any officer thereof, and to all and sundry the rents and profits of my real estate whatsoever and wheresoever, to have and to hold the same unto Charles Borcherling, junior, receiver as aforesaid, to be by him disposed of according to the orders of said court of chancery made and to be made in a cer-
199 tain cause wherein Ellen M. Close is complainant and Joseph B. Close defendant.

In witness whereof I have hereto set my hand and seal this day of , one thousand eight hundred and seventy-five.

Sealed and delivered in presence of—

200 *Execution.—Ret'ble Feb'y* 7, 1876.—PARKER & KEASBY, *Sol'rs.*

ELLEN M. CLOSE, COMPL'T,
and
JOSEPH B. CLOSE, DEF'T.

[L. S.] New Jersey, to wit:

The State of New Jersey to the sheriff of the county of Hudson, greeting:

Whereas on the twenty-ninth day of January, one thousand eight hun-

dred and seventy-five, by a certain decree made in our court of chancery before our chancellor, at Trenton, in a certain cause therein depending, wherein Ellen M. Close is complainant, and Joseph B. Close is defendant, it was among other things ordered, adjudged, and decreed that the said defendant should pay to said complainant or to her order, on the second Monday in February, one thousand eight hundred and seventy-five, the sum of twelve hundred and twenty-five dollars as and for arrears of alimony, then already ordered in said cause and for further alimony up to said second Monday in February aforesaid, and it was thereby
201 further ordered, adjudged, and decreed that said defendant should further pay to said complainant, on said second Monday in February, one thousand eight hundred and seventy-five, the unpaid costs then in said cause taxed or to be taxed, and also the sum of thirteen hundred and seventy-eight dollars which was thereby adjudged and decreed to be the reasonable counsel fee of and for the counsel of said complainant, and it was thereby further ordered, adjudged, and decreed that said decree should, from the date thereof, be a lien upon the personal and real estate of the said defendant, in the State of New Jersey.

And that the said complainant have execution, according to the *cause* and practice of said court for the recovery of said costs, counsel fees, and alimony awarded up to the second day of February, one thousand eight hundred and seventy-five, or for such parts thereof as should remain unpaid.

And whereas afterwards an appeal was taken by the said de-
202 fendant from said decree to the honorable the court of errors and appeals in the last resort in all causes by law, &c., by whom, at the term of June of said court, in the year one thousand eight hundred and seventy-five, the same was in all things affirmed, and it was further ordered that the said Joseph B. Close should pay the costs of the said complainant in that court to be taxed, and also such sum as the court of chancery should award as counsel fees for the counsel of said appellee in said court of appeals; and the record of said cause and the proceedings were thereupon remitted from said court of appeals to the said court of chancery, to be proceeded with according to law; and whereas thereupon, on the twenty-seventh day of July, one thousand eight hundred and seventy-five, the said record and proceedings having been remitted as aforesaid, it was by the chancellor in said court of chancery ordered & decreed that the said Joseph B. Close do pay the sum of two hundred and fifty dollars
203 as such counsel fee upon said appeal, and that said Ellen M. Close do have execution according to the course and practice of said court for the recovery of said costs and counsel fees, as also of the further costs of that decree to be taxed; that said decree should, from the date thereof, be a lien upon the personal and real estate of said Joseph B. Close, in the State of New Jersey, and that a copy thereof should be forthwith served upon said Close or his solicitor.

And whereas said decrees, and each of them, were duly served upon said Joseph B. Close, or his solicitor, and demand made of the monies aforesaid, but the same was never paid; and whereas the unpaid costs in said cause, then taxed and to be taxed, mentioned in said first above-recited decree, amount together, the same having been duly taxed, to the sum of two hundred and fifty-nine dollars and eleven cents, and the costs of said last-

mentioned decree have been also taxed at the sum of sixty-eight
204 dollars and sixty-five cents. Now therefore you are hereby commanded that without delay you do cause to be made of the goods and chattels of the said Joseph B. Close, in your county, the several sums of money aforesaid, to wit, the sum of twelve hundred and twenty-five dollars, the arrears of alimony aforesaid, with interest thereon from the day on which the same was as aforesaid payable; the sum of two hundred and fifty-nine dollars, and being the unpaid costs at the date of said first-mentioned decree, taxed and to be taxed, and which has been since taxed as aforesaid, with interest thereon from the first Monday of February, one thousand eight hundred and seventy-five; the sum of thirteen hundred and seventy-eight dollars, being the amount of counsel fees as aforesaid, with interest thereon from the said first Monday of February, one thousand eight hundred and seventy-five; the sum of thirty-three dollars and sixty-two cents, of taxed costs in the court of appeals aforesaid; the sum
205 of two hundred and fifty dollars, counsel fee upon said appeal, and the sum of sixty-eight and sixty-five cents, taxed costs in said court of chancery, on the return thither of the record and proceedings ordered to be paid by the decree of said court of chancery last recited, with interest thereon from the twenty-seventh day of July, one thousand eight hundred and seventy-five; and if sufficient goods and chattels of the said Joseph B. Close, in your county, you cannot find whereof to make the said sums of money, then, and in that case, we command you that of the lands, tenements, and real estate of the said Joseph B. Close, in your county, whereof he was seized on the twenty-ninth day of January, one thousand eight hundred and seventy-five, the day of the date of the first-mentioned decree, or at any time afterwards in whosesoever hands the same may be, you do cause to be made the whole or the residue, as the case may require, of the said several sums of money by said decree as aforesaid ordered
206 to be paid; and that of the lands, tenements, and real estate of said Joseph B. Close, in your county, whereof he was seized *in* the twenty-seventh day of July, one thousand eight hundred and seventy-five, the date of the last-mentioned decree aforesaid, or at any time afterwards in whosesoever hands the same may be, you do cause to be made the whole or the residue, as the case may require, of the said several sums of money by said last-mentioned decree as aforesaid ordered to be paid; and that you pay the said sums of money so by you to be levied and made to the said complainant, or to her solicitor, in said cause, and have you this writ, with your proceedings thereon, before our chancellor in our court of chancery, at Trenton, on the first Tuesday of February next.

Witness, Theodore Runyon, esquire, our chancellor at Trenton aforesaid, the twenty-sixth day of November, in the year of our Lord one
207 thousand eight hundred and seventy-five.

H. S. LITTLE, *Clk.*

PARKER & KEASBEY, *Sol's.*

208 *Receiver's oath.—Filed Dec.* 21, 1875.

Before me, a master in chancery of New Jersey, on this twenty-first day of December, one thousand eight hundred and seventy-five, came Charles Borcherling, junior, of Newark, New Jersey, who, being duly

sworn, on his oath saith as follows: I, Charles Borcherling, junior, appointed receiver of the personal estate, and of the rents and profits of the real estate of Joseph B. Close, the above-named defendant, do hereby solemnly profess and swear that I will faithfully perform and discharge all and every the duties devolving upon me as such receiver, and make report at least once in every three months of my proceedings in the premises. So help me God.

CHARLES BORCHERLING, JR.

Sworn and subscribed this 21st day of December, A. D. 1875, at Newark, in said county, before me.

WM. H. HAGAMAN, JR.,
Master in Ch'y of N. J.

209 I, Henry S. Little, clerk of the court of chancery of the State of New Jersey, do hereby certify that the foregoing is a true of the bill, answer, replication, appeal, decree of dismissal, decree of remittitur, decree, order, decree, appeal, decree of remittitur, order for sequestration, execution, and receiver's oath in a cause wherein Ellen M. Close is complainant and Joseph B. Close is defendant.

In testimony whereof I have hereto set my hand and affixed the seal of said court at Trenton, this first day of June, A. D. eighteen hundred and seventy-eight.

[SEAL.] H. S. LITTLE, *Clk.*

210 I, Theodore Runyon, chancellor of the State of New Jersey, do hereby certify that Henry S. Little, whose name is subscribed to the above certificate, was, at the date thereof, and now is, the clerk of the court of chancery of the State of New Jersey; that said certificate is in due form of law, and the seal thereto attached is the seal of said court, and that the signature of the said Henry S. Little is in his own proper handwriting.

Witness my hand, at the city of Trenton, this first day of June, A. D. eighteen hundred and seventy-eight.

THEODORE RUNYON.

211 *Motion by complainant for receiver.*

In the supreme court of the District of Columbia.

CHARLES BORCHERLING
vs.
THE GLENWOOD CEMETERY CO. ET AL. } No. 5877. Eq. doc. 17.

The complainant moves the court for the appointment of a receiver pending this suit, to take possession of the real estate mentioned in the cross-bill, to collect all the rents and profits thereof.

WORTHINGTON & HEALD,
Sol'rs for Compl'ts.

To NATHANIEL WILSON, Esq., *Sol'r for Joseph B. Close:*
J. HUBLEY ASHTON, Esq., " " *Geo. Clendenin:*
T. J. MILLER, Esq., *Sol'r for Glenwood Cemetery:*

Please take notice that on Saturday next, the 8th day of June, 1878, or

as soon thereafter as counsel can be heard, we will call up the above motion.

WORTHINGTON & HEALD,
Sol'rs for Compl'ts.

212 I, on oath, say that I left copies of the above motion & notice at the offices of Nathaniel Wilson & J. Hubley Ashton, 635 F st. N. W., on Wednesday, June 5th, 1878.

J. C. HEALD.

Subscribed and sworn before me June 6, 1878.
R. J. MEIGS, *Cl'k*,
By R. J. MEIGS, JR., *Ass't.*

Service acknowledged this 5th June, 1878.
TH'S JESUP MILLER,
For Cemetery Co.

213 *Rescission of order of May 25, 1879, making Borcherling defen't.*

In the supreme court of the District of Columbia.

GLENWOOD CEMETERY, PL'FF,
vs.
JOSEPH B. CLOSE ET AL., DEF'TS. } In equity. No. 4760.

CHARLES BORCHERLING
v.
JOSEPH B. CLOSE ET AL., DEF'TS. } Cross-bill.

Now come the defendants, Joseph B. Close and George Clendenin, by their solicitors, and move the court that the order passed here in on the 25th day of May, 1878, admitting Charles Borcherling to be a party defendant, be rescinded, and that the so called cross-bill filed by the said Borcherling on the 4th day of May, 1878, be ordered to be taken from the files of the court.

J. HUBLEY ASHTON,
NATH'L WILSON,
Sol'rs for Def'ts.

214 *Order affirming order of* .

In the supreme court of the District of Columbia.

CHARLES BORCHERLING, PL'FF,
vs.
JOSEPH B. CLOSE, THE GLENWOOD CEMETERY, et al., def'ts. } In eq. 5877.

The motions made on behalf of the defendants Joseph B. Close and George Clendenin to rescind the order passed herein permitting the said Borcherling to become a party defendant, and to take the cross-bill from the files of the court, and also the motion made on behalf of the said Bor-

cherling for the appointment of a receiver and the granting of an injunction:

It is ordered by the court in equity, sitting this 11th day of June, 1878, that the motion to rescind said order admitting the said Borcherling as a defendant to the original bill in this cause, be, and the same is hereby, denied, and that the motion to take the cross-bill from the file of the court
215 be, and is hereby, granted, with leave to the said Borcherling to apply for leave to file a cross-bill, as he may be advised; and it is further ordered that the application for an injunction and the appointment of a receiver, made on behalf of said Borcherling, under said cross-bill, be and is hereby denied.

By the court:

MACARTHUR, *Justice.*

216 *Replication.*

In the supreme court of the District of Columbia.

GLENWOOD CEMETERY, COMPLAINANT, *vs.* J. B. CLOSE ET AL., DEFENDANT. } No. 5877.

The complainant joins issue with the answers of the defendants J. B. Close, George Clendenin, and Charles Borcheling.

T. W. BARTLEY,
T. JESUP MILLER,
For Complainant.

217 *Injunction awarded vs. defendants, June 25, 1878.*

In the supreme court of the District of Columbia.

GLENWOOD CEMETERY *v.* JOSEPH B. CLOSE ET AL. } No. 5877. Equity.

This cause came on to be heard at this term, on the motion of the complainant for an injunction pendente lite, and was argued by counsel. Thereupon, upon consideration thereof, it is, this twenty-fifth day of June, A. D. 1878, ordered and decreed the the defendants, and each and every of them, and their servants, employees, and agents, be and they are hereby restrained and enjoined from obstructing, or in any manner interfering, with the plaintiff, through its officers, in assuming possession of, and in the management and control by it, of the said thirty acres referred to in the proceedings in this cause, as devoted and used as cemetery grounds for purposes of sepulture, until the further order of the court. And
218 it is further ordered that this order shall take effect upon the plaintiff filing with the clerk of the court, in this cause, its bond to the said Joseph B. Close, in the penal sum of $10,000, with one or more sureties, to be approved by the clerk of the court. The time allowed for taking testimony shall be, to the plaintiff, forty days from this date; to the defendants, ten days; and to the plaintiff to reply, ten days.

By the court:

MACARTHUR, *Justice.*

219 *Bond of injunction, June 25, 1878.*

In the supreme court of the District of Columbia, the 25th day of June, 1878.

GLENWOOD CEMETERY
v.
JOSEPH B. CLOSE ET AL. } In equity, No. 5877. Docket .

The complainant in the above-entitled case, and Thomas W. Bartley, Lewis Clephane, John McClelland, and George W. Cochrane, sureties, acknowledge themselves indebted to the defendant Joseph B. Close in the sum of ten thousand dollars ($10,000), for the payment of which to said defendant, his executors, administrators, or assigns, they bind themselves and every of them, their, and every of their heirs, executors, and administrators, jointly and severally, for and in the whole. Sealed with their seals and dated the day and year aforesaid.

Whereas the said complainant has obtained an injunction to restrain the defendants, their servants, employees, and agents from obstructing
220 or in any manner interfering with the plaintiff through its officers in assuming possession of and in the management and control by it of the said thirty acres referred to in these proceedings as used as cemetery grounds, for purposes of sepulture, until the further order of the court.

Now, the condition of the above obligation is such that if the complainant shall pay all costs and damages occasioned by the improper obtaining of said injunction, and shall in all things obey such order and decree as this court shall make in the premises, then the above obligation to be void and of no effect, else to be in full force and virtue.

{ GLENWOOD CEMETERY SEAL. }

GLENWOOD CEMETERY,
By T. W. BARTLEY, *President, &c.*
T. W. BARTLEY. [SEAL.]
JOHN McCLELLAND. [SEAL.]
GEO. W. COCHRANE. [SEAL.]
LEWIS CLEPHANE. [SEAL.]
Sureties.

GEO. W. COCHRANE,
Secretary Board of Trustees.

1878, June 26, approved, in obedience to order of court.
By the clerk—

R. J. MEIGS, *Cl'k,*
By R. J. MEIGS, JR., *Ass't.*

221 30 acres you may have, but 60, ah, no!

NATH'L WILSON.

MARCH, 1879.

Supreme court of the District of Columbia.

THE GLENWOOD CEMETERY
vs.
JOSEPH B. CLOSE ET AL. } No. 5877. Equity.

Depositions on behalf of the complainant.

JOHN MCCLELLAND, the first witness called in behalf of the complain-

ant, after being first duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and testifies as follows:

Questions on behalf of the complainant:

Q. 1. State your name, place of residence, and occupation.

A. 1. My name is John McClelland; I reside in Washington, D. C., and have lived here all my life; and my occupation is that of a machinist.

Q. 2. Please state whether you are a lot owner in Glenwood Cemetery of the District of Columbia; and, if so, when you became such, and what you know about the manner in which the cemetery has been conducted, and about the conduct of the superintendent, and when the controversy arose between the lot owners and the superintendent, Clendenin, &c.

A. 2. I am a lot owner in Glenwood Cemetery, and have been such since some time in 1863; I selected that cemetery and purchased a lot in it on the representation and understanding held out to the community by the persons engaged in conducting it that it was managed by a company incorporated by act of Congress in a legal and proper manner. If I had had the slightest suspicion that it was even claimed to be the private property of Mr. Close or Humphrey, non-residents of the District of
222 Columbia, I would never have entertained any idea of purchasing a lot in said cemetery.

I buried a deceased member of my family in my lot in the cemetery in 1863, but did not give the matter much attention until I buried my wife there in 1872. From that time I inquired into the management of the cemetery. I ascertained in 1873 that there was great dissatisfaction among the lot owners on account of the management of the cemetery and the way in which its affairs were conducted, and the dissatisfaction continued until at last the lot owners made application to Congress for an amendment of the charter in 1876. In 1873 the lot owners were consulting and advising together how they could protect their rights in Glenwood Cemetery, and a meeting of the lot owners in that year was appointed to be held at my house to take some action in relation to protecting themselves in their rights in the cemetery, and I have every reason to know and fully believe that Mr. Clendenin was informed of this intended meeting the Sunday afternoon previous to the meeting. This was before Judge Bartley had become known as a lot owner or had taken any part in the matter. I have seen the answer of the def'ts Clendenin and Close, in which they state that the affairs of the cemetery were conducted in a manner satisfactory to the lot owners, until 1876, and that Judge Bartley created the dissatisfaction among the lot owners and instigated the movement for an amendment of the charter. I know this statement to be untrue, and it is difficult for me to conceive how Mr. Clendenin can innocently make such a statement. Bartley did co-operate with the lot owners in 1876 in their movements to procure an amendment of the charter, but did not instigate the movement, for it was the spontaneous action of all the lot owners in the District of Columbia, except a few who were connected with Mr. Clendenin and his family.

The statement of the answer as to the expenditures on the cemetery grounds are certainly extravagant. I know the grounds well, and all that has been done on them and all the work and improvements made on the grounds by the company could have been done for fifteen or eighteen thou-

sand dollars, in my judgment. The cemetery has not been kept in good condition, and as to the cutting of the grass on the lots mentioned, that has been nothing more than mowing the grass for hay and feed for horses and cattle.

223 The dedication of the grounds for the purpose of a cemetery has always been represented to the lot owners and understood to have consisted of the whole ninety acres. Thirty acres were laid out into lots at first to answer present purposes, but the balance of the tract was understood to be held as a dedication for the same purpose, and to be laid out into lots as soon as the uses of the cemetery should require it; and the lot owners, so far as I know, bought and located their lots with this understanding as to the surroundings and appurtenances thereof. The deeds given for the lots were all executed under the seal of the corporation and signed by Jos. B. Close, as president, from the time it was started down until 1877, and the pamphlet giving the organization of the company, the rules and regulations of the cemetery, the ceremonies of the dedication, and copy of the charter, &c., filed in this case, were delivered by the superintendent, Mr. Clendenin, to each and every lot purchaser, to show the authority by which and the manner in which the cemetery was conducted; and the cemetery has always been represented and held out to the world as an incorporated institution by the persons engaged in its management and the sale of the lots; but Mr. Clendenin's management of the cemetery has been so unsatisfactory to the lot owners that the abandonment of lots and the removal to other cemeteries have been frequent and numerous.

The following is a list of removals from Glenwood to Oak Hill Cemetery, as taken from the books of the latter Co.: Olive Hall, Henry A. Merrill, Willie Smith, Spencer Room, Henry S. Guage, Mary Boreland, S. H. Goodman's child, William Clark, Robert Leech, John M. Kraft, sr., John M. Kraft, jr., Mary P. Kraft, Caroline C. Riley, John N. McKenny, D. McKenny, Emma Allman, Ella Allman, and to my own knowledge John Nairn has removed all his dead. There were also removals to other cemeteries; these removals took place within the last eight or ten years.

On the application to Congress for the amendment of the charter in 1876 and the beginning of 1877, Mr. Clendenin himself in person, and Mr. Close, through his counsel, Mr. Winfield, of New Jersey, made a

224 strenuous and persistent effort to defeat and prevent the passage of the amendment. They never claimed nor pretended that the cemetery was not acting under the act of incorporation until since the lot owners organized under the charter as amended.

The sole object of the lot owners in procuring the amendment of the charter was to protect their rights in the cemetery in furtherance of the sacred purposes of the corporation, and to have it conducted by the controlling authority of those immediately interested in the cemetery, and not by non-resident speculators unknown in the District of Columbia. As a matter of fact in the conduct of the cemetery, I may add that from the beginning or first start of the institution the names of the original proprietors who controlled it were concealed from the lot owners, except so far as is disclosed in the printed pamphlet mentioned, and the residence of those persons and their address were not made known to the lot owners, but concealed from them until found out after the application to amend the charter.

JOHN McCLELLAND.

Sworn to and subscribed in my presence, June 18, 1878.

H. R. SULLIVAN,
Ex. Chancery, D. C.

LANDON W. WORTHINGTON, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says:

First question on behalf of the complainant. State your name, place of residence, and occupation.

1st answer. My name is Landon W. Worthington; I reside in Washington City, D. C.; I have been living here since March, 1852, 26 years; my occupation is that of a grocery merchant.

Q. State whether you are a lot proprietor in Glenwood Cemetery; and, if so, when you became such, and what facts have fallen under your observation in the conduct and management of the cemetery. Also state when and how the controversy between the lot owners and the superintendent began.

A. I am a lot owner in Glenwood Cemetery, and have buried seven (7) of my family there. I purchased, some time in the summer of 1857, from Mr. Clendenin, what he said was two hundred (200) [feet] of land, for which I paid him fifty ($50). I purchased from Mr. Clendenin with the understanding that the property was under the control of an incorporated company; but some time after I had bought, and graves began to multiply, and having no deed for my lot, my fears, with others, became aroused, and I became for my title. I applied several times to Mr. Clendenin for a deed from the company, and he did, some nine or ten months after my purchase, give me a deed purporting to be from the company, signed by Jos. B. Close as their president. After which I rested satisfied for some time, until I found out that Mr. Clendenin made charges against lots without authority or directions from any official board, and from expressions I often heard, I, with others, became sorry that I had ever purchased in Glenwood Cemetery. My first attempt to improve my lot under Rule 5 of the cemetery, as attached to deed, was resisted by said Clendenin, in violation of a rule of the cemetery, which rule reads thus:

"The proprietor of each lot shall have the privilege to erect any proper stones, monuments, sepulchral structures thereon, and to cultivate shrubs and plants in the same."

The violation was in refusing and prohibiting Mr. Juvanall from setting three sets of grave-stones after I had contracted with him to prepare and set them for a certain sum which I had paid him. Clendenin refused to let Juvanall set the stones, but set or had them set himself, without my order, and against my protest.

Mr. Clendenin sent me a bill for six dollars for setting the stones, which I refused to pay, having once paid for them. I had before paid him when I purchased the lot four dollars and fifty cents for sodding, and also paid him several times afterwards bills for resodding, and finally refused to pay another bill after examining the lot and finding the resodding not done on the lot.

I have frequently heard complaints about work being done without orders, and exorbitant charges made. I told Mr. Clendenin at one time of complaints being made by ladies respecting the mowing down of shrubbery they had planted in their lots. I named to him the case of Mrs.

Harvey, a lady of high standing, who complained and felt sorely grieved respecting some shrubbery that she brought from New York and highly prized, and planted at her husband's grave, being cut down by Clendenin or his hands. On telling him this, he unhesitatingly pronounced it a lie, in an abrupt and abusive manner.

226 The bills paid to Clendenin and receipted by him, are hereto attached, and for identity marked Exhibits A, B, C, and D. And Exhibit E, herewith submitted, is the deed for my lot, received by me, and the exhibit marked F, hereto attached, is a bill which I refused to pay, because the resodding was not done, and I had previously paid the man who made the grave-stones for setting them.

Q. State what time, or how long after you became a lot owner, before dissatisfaction between Clendenin and the lot owners commenced.

A. In less than two years after I purchased my lot the dissatisfaction among the lot owners commenced. I had made complaint myself, and heard others make complaint.

Q. Do you, from your knowledge and observation, consider Mr. Clendenin a suitable man to conduct and manage a cemetery in a civilized community?

A. My opinion is that he is not a suitable man. This opinion I have entertained for fifteen or twenty years.

Q. Were you appointed on a committee at a meeting of the lot owners, to call upon Mr. Clendenin for a full list of the lot owners appearing on the books of the company?

A. I was; and Mr. Arthur M. Muzzy and myself, acting as such committee, called on Mr. Clendenin and respectfully asked him for the list of the lot owners, or for permission to take the list ourselves from the books. He became abusive on that occasion, and positively refused to give us the list or let us take it, and the committee made a formal report of the facts which took place to another meeting of the lot owners, and the facts set forth in that report I know to be true; and the following exhibit is the report of the committee which was accepted by the meeting, and which shows the conduct of Mr. Clendenin, and the state of feeling on his part towards the lot owners:

"REPORT OF THE COMMITTEE OF CONFERENCE.

"As the superintendent has published a card, in which he has assailed the committee, and also the lot proprietors on the occasion of being called on for a full list of the lot owners appearing on the books of the company, the publication of the following extracts from the report is respectfully requested:

"The committee report, among other things, as follows: That they called on Mr. Clendenin, the superintendent, and respectfully requested a complete list of the names of the lot owners appearing on the books of the company. The form of the request was, that he should either furnish the list to the committee, or allow them to take the same from the books themselves there, at the office of the company. He refused to comply with the request in either form, but offered to sell the books, and said that

227 the books and all the property of the company were for sale. The manner and language of the superintendent were brusque and abusive. The right of the lot proprietors to inspect the books and to have this

list cannot be questioned, and was not questioned by the superintendent himself at the time, although evasively refused. Originally, and for some years after the institution of the cemetery, each lot owner was furnished with such a list, attached to his copy of the rules and regulations of the cemetery; but the names of those who have become lot owners within the last six or eight years have been kept back.

"About the beginning of this interview Mr. Clendenin presented a bill against Mr. Worthington, one of the members of the committee, who told him that the bill was unjust; that he (Mr. Clendenin) knew it to be unjust, and that when presented, over eight years ago, he, Mr. Worthington, had pronounced it unjust and challenged Mr. Clendenin to contest its validity by legal process. In the course of the interview Mr. Clendenin charged that 'the object of the lot owners' association was to steal the property of the original proprietors.' In this declaration he was very emphatic, and repeatedly and alternately used the words 'rob' and 'steal' in this connection. The committee kindly informed him that such a charge was utterly absurd and groundless, and that the lot owners desired nothing but what was right, just, and fair, and explained the matter to him fully.

"In justice to the lot owners, the committee deem it proper here to add: The lot proprietors' association is composed of gentlemen of known standing and respectability in Washington; and the sole objects of their association, which are declared in their constitution, are 'to secure and protect their rights in the cemetery.' That they have rights of property is unquestionable. They have received and hold, severally, a conveyance in fee for their lots from the corporation, and this before the scheme of the New York speculators was developed and understood; and it is equally unquestionable that just occasion has been given for their association and concert of action to secure those rights, which are now in manifest jeopardy. But the lot proprietors have never denied, and do not now deny, that the New York speculators have rights of property in the cemetery grounds. But what are the respective rights of the contending porties?

"The speculators, having dedicated the grounds to the purposes of a cemetery under the charter of the corporation, on the terms of maintaining and keeping up the cemetery, have limited their rights of property to a due and proper dividend arising from the sales of the lots for burial purposes, less the expenses of maintaining the cemetery. This is the undeniable extent of the rights of property of the speculators, and no more, and these rights the lot proprietors have never denied nor proposed to invade. The lot proprietors are entitled to the free use of their lots for purposes of burial and ornament and improvement, together with the
228 appurtenances, consisting of the incidental connection and proximity of the cemetery's grounds already dedicated, on the terms and conditions of being maintained in a proper manner.

"This defines the respective rights of the contending parties distinctly, and which no intelligent man understanding the subject can deny. The amendment to the charter does not propose to invade these rights to any extent whatsoever, but simply proposes, for the safety and security of the grounds for burial purposes, to have the affairs of the cemetery conducted by a board of trustees elected by the lot proprietors in the District of Columbia, instead of a board of managers residing in New York. And, in such case, if the speculators could not agree with the board of trustees as

to the just amount of the proceeds of the sales of the lots to be paid over to them, the bill provides for the courts of equity in the District of Columbia to settle and control that matter. Could anything be more fair than this, and at the same time provide effectual safeguards to the lot proprietors against the cupidity of the New York speculators? If they are unwilling to trust to the equity courts of the District of Columbia, they should not have sought their grave-yard speculations within this District.

"This is a fair and full exposition of the measure of the proposed amendment, pending in Congress, which Mr. Clendenin characterizes as a 'robbery,' or an attempt 'to steal the property' of the speculators. His language is defamatory, and deserves a more severe rebuke than we can condescend to give it here. Trustees, by whomsoever elected, occupy a fiduciary relation to all parties in interest, and in the execution of the trust are always subject to the control of the equity courts. The change proposed would simply place the administration of the affairs of the cemetery in the charge of a board of trustees, elected by the large body of men most immediately interested in its beneficial objects, instead of a board of managers living at a distance, who can have no means of personal observation of the cemetery, and that without jeopardizing in the slightest degree the real interests of the speculators.

"L. W. WORTHINGTON,
"ARTHUR M. MUZZY,
"*Committee.*"
L. W. WORTHINGTON.

Sworn to and subscribed before me, an examiner in chancery in and for the District of Columbia, this twentieth day of June, 1878.

H. R. SULLIVAN,
Ex. in Chancery, D. C.

T. W. BARTLEY, having been first duly sworn, deposes and testifies as follows:

229 Questions on behalf of the complainant.

Q. 1. State your name, place of residence, and occupation?

A. 1. My name is Thomas W. Bartley; my residence in the city of Washington, D. C.; and my occupation, the practice of the law.

Q. 2. Are you a lot owner in the Glenwood Cemetery, and, if so, when did you become such, and what facts are within your knowledge touching the organization of the company, the management of the cemetery, and the conduct of the superintendent, Clendenin?

A. I became a lot proprietor in said cemetery in 1873, by the purchase and conveyance to me of two lots, for the consideration of one hundred and ninety dollars. I bought the lots of Clendenin, who was acting as superintendent and agent of the company. Before making the purchase I made particular inquiry about the cemetery, its organization, management, regulations, &c., of the superintendent, Mr. Clendenin, and he told me that it was incorporated by act of Congress, and conducted under the authority and on the terms of the charter. He referred to some other cemeteries about Washington to show the advantages of this one. He said that the title for the lots conveyed to purchasers under the charter was a fee simple title, &c.; and he gave me at the time a printed pamphlet to show

me the dedication of the grounds to the purposes of a cemetery, the rules and regulations prescribed, a copy of the charter, and the organization of the company, together with a plat of the grounds laid out. I asked him why the whole ninety acres had not been laid out into lots, and he said that thirty acres in lots had been sufficient heretofore, but that the remaining sixty acres would in due time be also laid out in lots, and that the whole tract belonged to and was included in the cemetery. In selecting my lots I was over the cemetery grounds several times, and closely observed their condition. The unsold and unoccupied lots were covered with a good, natural sward or sod, which could not be improved by artificial sodding. In the course of a year or more after I had purchased my lots I concluded to improve them, and engaged a man to lay a stone foundation for an enclosure, which he had stipulated, after getting the dimensions and locality of the lots, to lay in a proper manner for twenty-five dollars;
230 and when I informed Clendenin that I had engaged this man to lay the foundation for an enclosure of the lots, he said that he would not allow the man to come into the cemetery to do it, as it was his business to do all underground work. I referred him to the second rule in the regulations attached to my deed, but he said that did not alter the matter, and that he would not let the man come to do the work. I then asked him what he would charge me to lay the foundation or do the same work. He took out his pencil and a piece of paper and made a calculation, and said that he would do the work for eighty-five dollars. I told him that I would not pay him $85 for work which another man had agreed to do for $25. On ascertaining Clendenin's disposition to extort and impose on the lot owners, I abandoned the idea of improving my lots, and looked at two other cemeteries, with a view of making a change and abandoning my lots in Glenwood. In a few months after this Clendenin met me on the street in Washington, and remarking to me that some of the lot owners in Glenwood Cemetery were having their lots sodded, he inquired if I did not want my lots sodded; I told him, in reply, that I did not, and that the natural sod on the lots was good enough, and that if I kept the lots I wished to improve them, and that would destroy the sodding. He said nothing more on that subject, but in a few months afterwards he sent me a bill for $20 for sodding my lots. I paid no attention to this, and in about six months afterwards he sent me another bill for $25, twenty dollars for sodding and five dollars interest for non-payment. Afterwards, on meeting Mr. Clendenin, I told him that if he thought this bill of his was a just and legal demand, to bring suit on it, and we would test the question legally. But he never sued on it. More than a year after this, when on the death of my wife, the undertaker was sent out to the cemetery, by a near relative of mine, to prepare the grave, Clendenin demanded, as a condition precedent, the payment of this bill for $25, and the undertaker, not knowing the circumstances, paid him the $25, supposing it to be all right. On learning the fact, I pronounced this act of Clendenin an infamous extortion, but paid the undertaker, as he had been imposed on by Clendenin. But the statement in Clendenin's answer that I threatened to make him "sweat for his act," is simply false, and a fabrication of his own imagination. After this unbecoming and grossly improper conduct on the part of Clendenin, I made
231 inquiry into the organization and past management of the ceme-

tery, and ascertained that Clendenin was the agent of parties in the control of the cemetery, wholly unknown in the District of Columbia, and residing in the vicinity of New York City, and having no interest in th cemetery except so far as they could use it for mere speculation. I also ascertained that there had been general dissatisfaction among the lot owners for some years on account of the peculations, extortions, and other improper conduct of Clendenin. Under these circumstances I co-operated with the lot owners and attended their meetings and united with them in their application to Congress for an amendment of the charter. If this was wrong, then I have erred. The statement in the defendant's answer that I caused the dissatisfaction among the lot owners and instigated the movement for the security of their rights which they have made, is simply false. The dissatisfaction among the lot owners existed before I had any connection with the cemetery, and they had been meeting and consulting about the protection of their rights, as I learned afterwards, before I had any knowledge of any such difficulty. On learning the gross improprieties and abuses practiced by Clendenin, I did co-operate with the lot owners, and aided in procuring the amendment of the charter, and this I did in the exercise of my legal rights and in the performance of a duty to the dead as well as the living; and the amendment of the charter violates no legal rights of the defendants, but was a necessary measure to protect the lot owners from the frauds and swindling operations of the defendants.

The printed pamphlet above-mentioned was a copy of that which is made Exhibit A, in the bill in this case. And when Clendenin gave it to me, he said that each lot-purchaser was entitled to a copy of it, and received it for information as to the organization, rules and regulations, &c., of the cemetery.

Pending the application to Congress for the amendment of the charter, the defendant, Clendenin, appeared in person, and Mr. Close by his attorney, Mr. Winfield, of New Jersey, and contested and resisted the matter before the Committees of the Senate and House of Representatives by every argument and statement they could bring to their aid. And the idea that the company was not incorporated, and the charter not accepted is an after-thought, and never promulgated until since the organization of the lot owners under the amendatory act.

T. W. BARTLEY.

232 Sworn to and subscribed before me this 18th day of June, 1878.

H. R. SULLIVAN,
Ex. in Chancery.

JULY 27, 1878.

Met pursuant to notice to take depositions on the part and behalf of the plaintiff. Present, Mr. Bartley and Mr. Thos. Jesup Miller, counsel for the plaintiff, and Mr. Nath. Wilson, counsel for defendants. John N. Oliver being agreed upon as examiner, whereupon

B. D. CARPENTER, a witness of lawful age, being duly sworn, in answer to questions by Mr. Bartley, deposed as follows:

Int. 1. Were you one of the assessors of property for taxation in the District of Columbia, when the levy court existed; and if so, what knowl-

edge have you in regard to an attempt made for an assessment of the grounds of Glenwood Cemetery for taxation?

A. I was one of the assessors in 1871, when the last assessment was made under the levy court. Mr. James Pilling was my associate assessor, and we called upon Mr. Clendenin at the Glenwood Cemetery with reference to an assessment of the cemetery grounds, more especially of that portion not in use for cemetery purposes. Mr. Clendenin stated that the entire land was exempt—not only the part that was in use, but the part that was not in use. In proof of his statement he produced to us the charter and proof of dedication of the ground—the 60 acres we wanted to assess more especially. And after some conversation with Mr. Clendenin about the matter, we left without assessing it. I have examined the assessors field book for that year (1871), and find that no assessment was made.

Int. 2. What evidence did Mr. Clendenin show you besides the charter of the company, to convince you that the whole 90 acres had been dedicated to the purposes of a cemetery?

A. Nothing more than the published proceedings at the dedication contained in a pamphlet.

Int. 3. Please examine the pamphlet here exhibited to you, marked Exhibit A, and attached to the original bill in chancery, and state whether the pamphlet he exhibited to you was the same as this or not?

233 A. I think it was, as well as my recollection serves me.

Int. 4. Did you or Mr. Pilling, at that time, question Mr. Clendenin on the subject as to whether the ground covered by the dedication mentioned in that pamphlet included the 60 acres not laid out into lots, as well as the 30 acres already laid out in lots, or not?

(Objected to by Mr. Wilson as leading and irrelevant.)

A. I think we had no question whatever about the 30 acres. We were inclined to exempt that because it was set apart and occupied and used for cemetery purposes, being enclosed by a high fence. We had doubts regarding the 60 acres being exempt, and so stated to Mr. Clendenin. From what we could see the 60 acres not laid out was used for farming purposes; and for the purposes of removing our doubts he exhibited the charter and dedication. We questioned Mr. Clendenin about it before seeing the pamphlet.

Int. 5. State whether or not Mr. Clendenin said or claimed, at that time, that the ground covered by the dedication included the 60 acres as well as the 30.

A. He did.

Int. 6. Was it usual, in the proceedings of the assessors, to require anything like an affidavit of the facts claimed in an exemption?

A. Not to my knowledge. We did not require it.

Int. 7. What proceedings have been had, if any, since the levy court ceased to exist, to assess the grounds of Glenwood Cemetery for the purposes of taxation in the District of Columbia?

A. From the records of the office it was entered for taxes in 1873 and 1874, and has been continued up to the present time.

(Mr. Wilson objects to the answer as not the best evidence of the facts stated.)

Int. 8. Please examine the record book here exhibited to you, marked "Assessments, county, District of Columbia," and say whether or not this

is one of the original record books of the assessor's office, and what it shows with regard to assessments attempted to be made of the grounds of Glenwood Cemetery?

A. This is one of the records of the assessor's office, known as a field book for 1873 and 1874. It shows an assessment of Glenwood Cemetery, thirty acres, one thousand dollars per acre, aggregating thirty thousand dollars; ten thousand for improvements, making a total of forty
234 thousand dollars. Also sixty acres, at three hundred dollars per acre, making eighteen thousand dollars, and two thousand for improvements on the sixty acres, making an aggregate of twenty thousand dollars on the sixty acres. Total aggregate for the whole grounds, sixty thousand dollars.

Int. 9. State whether or not this assessment of valuation for taxation has been changed or not on the tax books of the District of Columbia, or whether, in the assessments of 1875, or since that time, the same taxable valuation has been continued, and whether it is now in full force on the assessor's books of the District of Columbia.

A. It has not been changed, and remains on the assessor's books as in 1873 and 1874.

Int. 10. State whether any taxes have been paid on the whole or any part of the taxable valuation stated by you.

A. I do not know; I cannot say.

(Mr. Wilson objects to all the foregoing deposition as irrelevant.)

Cross-examination by Mr. WILSON:

Cross-int. 11. In what year and in what month, and what day of the month, and at what place did the conversation occur with Mr. Clendenin to which you have referred?

A. I think it was in February, 1871. I cannot state the day of the month, because we kept no memorandum of our daily work. I know it was cold. It was in the office room of the cemetery.

Cross-int. 12. How long had you been one of the assessors at that time?

A. The levy court appointed Mr. Pilling and myself the first meeting of the court, in January, 1871, to make the assessments for the 3rd, 4th, and 5th school districts. I have no personal knowledge of the assessments made since 1871 up to 1876.

Cross-int. 13. What assessments were made on this property in 1876?

A. The same as in 1873 and '74, as shown by the book to which I have already referred.

Cross-int. 16. So that in 1876 and 1877 you did assess the 60 acres that adjoins the cemetery proper?

A. We did the whole—the 60 and the 30, just as they had been assessed in 1873 and '74.

Cross-int. 17. Was the same assessment made for 1878?

235 A. Yes, sir, it was.

Cross-int. 18. You of course have no personal knowledge whether the taxes on the assessments have been paid?

A. No; I have not.

Redirect by Mr. BARTLEY:

Q. 19. You have stated that you are now acting as assessor in the asses-

sor's office of the District of Columbia; state whether as such officer you are the custodian of this record book which is now before you, and from which you have spoken.

A. I am one of the custodians of this book.

Int. 20. Will you please furnish a copy of the entry in this book with regard to the assessments of the grounds of Glenwood Cemetery to be attached to this your deposition?

A. I will, and here produce it, which is filed and marked Exhibit B. D. C., No. 1.

B. D. CARPENTER.

Subscribed and sworn to before me this 27th day of July, 1878.

JOHN N. OLIVER,
Examiner in Chancery.

EXHIBIT B. D. C., No. 1.—*Filed July* 27, 1878.—JOHN N. OLIVER, *Examiner.*

Copy from the assessors' book of Washington, D. C., for the years 1873 *and* '74.

Cemetery Glenwood, location, Lincoln ave., 30 acres, assessed at $1,000 per acre and $10,000 for improvements, aggregating $40,000; 60 acres assessed at $300 per acre and $2,000 for improvements, aggregating $20,000, making a total assessment of $60,000.

B. D. CARPENTER,
Assessor.

WASHINGTON, D. C., *July* 27*th*, 1878.

JOHN F. COOK, being duly sworn, in answer to questions by Mr. Bartley, of counsel for plaintiffs, deposed as follows:

Int. 1. State your place of residence and present occupation.

A. I reside in Washington City, and am collector of taxes for the District of Columbia, and have been collector of taxes since July, 1874.

236 Int. 2. Have any taxes been paid at any time upon any part of the grounds of Glenwood Cemetery to the collector of the District of Columbia?

A. Not to my knowledge.

Int. 3. Under the valuation for taxation made in 1873, '74, why have not taxes been collected on some part of the 90 acres said to belong to Glenwood Cemetery?

A. In no record prior to the one on the table here has any return been made to my knowledge of the property for taxation. This book on the table to which I refer is "An assessment of real property by the assessors within the District of Columbia," under act of Congress approved March 3, 1875.

Int. 4. Did you as collector of taxes in the District of Columbia address a communication to Mr. J. B. Close, president of Glenwood Cemetery in 1876; and if so, did you receive any reply from him, and if so, please produce the same?

A. Upon the receipt of the taxation based on this assessment here exhibited tax bills were sent to the respective parties, one of which was sent

to the representatives of Glenwood Cemetery, addressed to Mr. Clendenin, during December, 1875, and January, 1876. In answer thereto I received a letter from Mr. Close, which I have and now produce it, but it belongs to the files of office of the Commissioners of the District of Columbia, and cannot be removed therefrom, but I herewith produce a copy certified to be an official copy by the secretary of the Commissioners of the District of Columbia. The same is filed and marked Exhibit J. F. C., No. 1.

Int. 5. Through whose hands or how did you receive this letter from Mr. Close?

A. It may have come by mail; I am not certain; Mr. Clendenin called about the same time relative to the same taxation; I am under the impression, however, that he called prior to the receipt of the letter.

Int. 6. Are you able to say whether this letter from Mr. Close was or was not handed to you by Mr. Clendenin?

A. I am not.

Int. 7. When Mr. Clendenin called to see about this taxation of which you have spoken what did he say or claim as to this assessment on Glenwood Cemetery grounds?

A. He stated that the grounds were exempt by reason of the charter.

237 Int. 8. What did he claim as to the extent of the dedication of the grounds, 60 acres of the grounds not having been laid out in lots?

A. He said nothing as to any partitions of grounds. I do not know that any chance was allowed him to say anything about that. He was referred to the Commissioners of the District of Columbia at the time. He claimed exemption for the whole grounds on the ground that it was used for a cemetery. There are 90 acres in the whole grounds.

Int. 9. Did Mr. Clendenin at that time, or any other time, exhibit to you a printed pamphlet showing the ceremony and proceedings under which the grounds at Glenwood Cemetery were dedicated?

A. To the best of my knowledge he exhibited a printed pamphlet containing the charter or act of incorporation, and some rules and regulations. The book he showed me was thinner and larger than the one now shown me.

Int. 10. Upon the paper exhibited state whether or not he claimed that the whole 90 acres of the cemetery grounds were exempted from taxation because they constituted the cemetery.

A. He claimed the cemetery exempt from taxation on the bill sent him, which included the whole 90 acres.

Int. 11. Did Mr. Clendenin furnish to you then, or at any other time, a statement in writing, signed by himself and Mr. Close, or by himself alone, claiming the whole of the grounds to be free from taxation, or in any wise touching that subject?

A. To the best of my recollection there was a paper presented by Mr. Clendenin claiming this exemption, accompanied by this copy of the charter. This paper and the charter was requested to be referred to the Commissioners. This was in December, 1875, or January, 1876?

(Mr. Wilson objects to the foregoing question unless the paper mentioned is produced.)

Int. 12. Please state where that paper is, if it be now in existence, that was signed by Mr. Clendenin.

A. I returned it to the hands of Mr. Clendenin, and referred him to the Commissioners with it.

Int. 13. What was done after this in regard to the payment of taxes on the grounds of Glenwood Cemetery, and were any taxes collected on the cemetery grounds?

A. The taxes have not been collected; they are still held chargeable for that tax.

238 Int. 14. As collector of taxes, why was it that you did not proceed to enforce the payment of these taxes on the cemetery grounds?

A. It was on account of the legal advice given by the attorney for the District of Columbia (Mr. E. L. Stanton) that the grounds were not subject to taxation under the charter.

Int. 15. Was this exemption from taxation extended to the whole 90 acres in the cemetery, or limited to the 30 acres?

A. As no limitation was implied in the opinion, we considered it applicable to the whole 90 acres.

JOHN F. COOK.

Sworn to and subscribed before me this 27th day of July, 1878.

JOHN N. OLIVER,
Examiner in Ch'y.

EXHIBIT J. F. C., No. 1.

BAYONNE CITY, N. J., *Jan.* 5, 1876.

JOHN F. COOK, Esq.:

DEAR SIR: I am in receipt of a tax bill on Glenwood Cemetery, in your District, as president of said cemetery. I send you a copy of the charter passed by Congress exempting the whole grounds owned by the company, there being less than one hundred acres, and of said contiguous grounds have been dedicated for burial purposes in accordance with said charter, and every other condition therein fully maintained by the said company, and you will see that the charter releases the company of paying taxes of any kind on the said cemetery. Therefore, as president thereof, I shall decline paying any taxes on account of said cemetery to the District of Columbia.

Very respectfully, your ob't s't,
(Signed) JOS. B. CLOSE.

Official copy of original letter on file in office of Board of Commissioners D. C.
July 13, 1868.

WILLIAM TINDALL, *Secretary.*

ATTORNEY'S OFFICE, DISTRICT OF COLUMBIA,
Washington, February 5, 1876.

To the Commissioners of the District of Columbia:

I return herewith the papers relating to taxes assessed upon the land included within Glenwood Cemetery.

239 The act of Congress incorporating the proprietors of the Glenwood Cemetery, approved July 27, 1854, provides, in section 7, that the land dedicated to the purposes of a cemetery shall not be subject

to taxation of any kind. If there is any land assessed in the name of the company not dedicated to the purposes of a cemetery, it is subject to the tax for the fiscal year ending June 30, 1876. The land, however, which is dedicated to the purposes of the cemetery is exempt from the tax, pursuant to the above-cited provision of the charter.

Respectfully,
(Signed) EDWIN L. STANTON, *Attorney.*

Copy furnished for the information of the collector D. C.
By order.

WM. TINDALL, *Secretary.*

T. W. BARTLEY, recalled as a witness on the part of plaintiffs.

Question by T. J. MILLER:

Int. 1. State what knowledge you have of a public notice having been given of the dedication of the grounds of Glenwood Cemetery in August, 1854.

A. I produce here a bound volume of the Daily National Intelligencer, commencing July 1, 1854, and running to December 30th of the same year continuously, which volume belongs to the Bar Association. In the number dated July 29, 1854, is the following notice:

"*Dedication of Glenwood Cemetery.*

"The public are respectfully invited to attend the dedication of Glenwood Cemetery, on Tuesday afternoon, August 1st, at 5 o'clock precisely. There will be appropriate services by the clergy of the city, and every arrangement made to make the occasion what it should be. Prayer by the Rev. R. L. Dashiell. Address by the Rev. Dr. Butler. Poem by the Rev. Mr. Sunderland.

"CHARLES B. CALVERT.	ABNER MELLEN.
"GEORGE PARKER.	WILLIAM BANKS.
"WILLIAM B. TODD.	JOSEPH B. CLOSE.
"JAMES C. MCGUIRE.	WILLIAM PHELPS.
"WILLIAM A. BRADLEY.	WILLIAM S. HUMPHREYS.
"CHARLES S. WALLACH.	RANDOLPH S. EVANS.

"N. B.—Glenwood Cemetery lies north of the Capitol, distance one mile and a half, formerly the estate of Junius J. Boyle, esq. Should the weather prove unfavorable, the dedication will be postponed until the next fair day."

And also the same notice is given in that paper of August 1, 1854, with the following additional item:

240 "DEDICATION OF GLENWOOD CEMETERY.—We are informed and requested to state that the President of the United States and several members of the Cabinet have indicated their acceptance of an invitation to be present at this interesting ceremony, to take place at 5 o'clock this afternoon."

Adjourned to July 29, 1878, 1 p. m.

JULY 29, 1878, 1 p. m.

Met pursuant to adjournment. Present, Hon. Thomas W. Bartley and

T. J. Miller, counsel for pl'ffs, and Mr. N. W. Wilson, of counsel for the defendants; whereupon, Mr. Bartley resumes.

Question by T. J. MILLER:

Int. 2. What do you know in regard to defendants, Close and Clendenin, opposing the passage of the amendment to the charter?

A. I took an interest in common with the lot owners generally in the enactment of the law amending the charter of Glenwood Cemetery, which passed the latter part of February, 1877. The application for the amendment to the charter was presented to Congress by a committee appointed by the lot owners, and I was one of the members of that committee. The application was made to Congress in the winter of 1876, I think in the month of February, and it was pending in Congress about one year before the bill was passed. The passage of the bill was strenuously opposed before the committees in both branches of Congress by defendant Clendenin in person, and by defendant Close, by his counsel, Mr. Winfield, a prominent lawyer from New Jersey. Before the committee of the House, Mr. Winfield, on behalf of Mr. Close, made an extended argument against the passage of the bill, insisting that it was in violation of the Constitution of the United States, and in violation of the rights of private property of the original proprietors of the ground. Mr. Clendenin also in person strenuously opposed the passage of the amendment of the charter before the committees of both branches of Congress to the very last.

(Question and answer objected to by Mr. Wilson as irrelevant.)

Int. 3. What do you know in regard to the proceedings of the lot owners after the amendment to organize under the amendatory act, and obtain possession of the cemetery?

241 A. Very shortly after the election of trustees, the defendants Clendenin and Close were each severally informed by a written communication of the election of said trustees, and in reply to that said trustees received from Mr. Jos. B. Close, in due course of mail, the reply which is shown in Exhibit C, attached to the original bill in chancery in this case, dated Bayonne, N. J., March 16, 1877. And this communication from Mr. Close gave the lot owners in Glenwood Cemetery the first information they ever had that it was claimed by Mr. Close that the original charter of Glenwood Cemetery had never been accepted, and that no organization had ever taken place under the original charter.

Cross-examination by Mr. WILSON on the foregoing deposition and also on the original deposition in this cause by witness:

Cross-int. 4. In your first deposition you speak of the gross improprieties and abuses committed by Mr. Clendenin. To what improprieties and abuses do you refer?

A. I referred to the abuses and improprieties which had been frequently mentioned in my presence by sundry different lot owners. Some of those consisted in Mr. Clendenin allowing ornaments planted upon graves by the friends of the deceased to be cut down and destroyed unless he was paid for taking care of the graves; to the fact of his making charges for sodding lots, when he simply took up the natural sod that was on the lots and replaced it by taking up the natural sod growing on some other part of the grounds, in order to furnish an occasion for making a charge against lot owners. One of the rules and regulations of the cemetery furnished by Mr. Clendenin himself to the lot owners provided in express terms that

the lot owners should be entitled to improve and take care of their lots in their own way, provided they did not violate any of the rules and regulations contained in those printed regulations. There was no regulation prohibiting the lot owners from sodding their own lots or having them sodded in their own way, yet Mr. Clendenin, after being told by lot owners or lot purchasers that they did not want their lots sodded, went on and sodded them and charged the lot owners for it. I would not undertake now to enumerate all the various complaints which I heard made by the different lot owners, but I heard a great deal said on that subject before I had any variance with Mr. Clendenin.

Cross-int. 5. Please give the names of the persons by whom these complaints were made?

242 A. I can give a part of them, but I don't know that I can give the whole of them now. I heard Mr. Wm. H. Morrison speak of it at different times, also Mr. McKinney, the assistant clerk of the Supreme Court U. S. A connection of Mrs. Farnham's family, who spoke of Mrs. Farnham as a lot owner. I do not remember his name. Mr. L. W. Worthington, Mr. McClelland, Dr. McFarlan, Mr. Lord, Mr. Brown. Mr. Stickney told me that his wife had made serious complaint at her treatment by Mr. Clendenin when she had visited the graves of her parents to ornament them. I have heard many more speak of various circumstances of this character, but I cannot just now without reflection name them.

Cross-int. 6. What was the general condition of the cemetery when you first visited it, and up to the time of the beginning of this suit?

A. The cemetery is situated on a very handsome piece of ground, susceptible of easy improvement. The condition of it as far as the improvements had gone I thought very favorably of, but I regarded them as in progress and not as fully completed. When I was there, before the controversy arose on the application to amend the charter, between the lot-owners and Mr. Clendenin, I was over and through the grounds generally, but I did not notice the condition of the grounds, and did not observe anything on account of which I was inclined to complain as Mr. Clendenin's neglect of the grounds; but since the movement to amend the charter, which was in the early part of 1876, I have not been over or through the grounds to observe their condition, but have been in the cemetery casually only.

Cross-int. 7. Were not the rules similar to those usually prescribed for the government of cemeteries?

A. I cannot answer that question directly, inasmuch as I am not familiar with the rules of cemeteries generally.

Cross-int. 8. Since you have been president of the corporation, have any changes been made in these rules?

A. I am not president of the corporation. I am simply president of the board of trustees for the time being. No changes have been made in the published rules that I know of. I speak of the printed rules and regulations of the cemetery as furnished by Mr. Clendenin heretofore, but no such practices as those complained of are allowed by the present board of trustees.

Cross-int. 9. Do you know anything of the scale of charges as compared with the charges in other cemeteries; whether they are higher or lower?

243 A. The charges for lots sold in the cemetery, I think were not unreasonable, but I am not aware that, in any cemetery well regulated, any charges are made for taking care of or making improvement upon lots except upon the special agreement of the owner of the lots with the superintendent, but as to the charges for digging graves and service in burials, I am not able to say whether the charges made by Mr. Clendenin are higher than charges for similar services in other cemeteries or not.

Cross-int. 10. Who prepared the original memorial to Congress?

A. I think I drafted it from information furnished to me by numerous lot owners. There was a committee of lot owners appointed at a meeting to ascertain the facts, and after the facts had been hunted up, as a member of that committee, I drafted the memorial, which the secretary of the meeting procured to be printed.

Cross-int. 11. Who drafted the bill presented to Congress with the memorial?

A. The bill was also prepared by a committee, and I think the same committee. I don't remember who made the first draft of the bill. Mr. McKinney prepared a part of the bill; I prepared a part of it myself; I cannot just now say how many took part in the preparation of the original bill, but a number of persons participated in it and were legally consulted in regard to it before it was presented to Congress.

Cross-int. 12. Did not the first bill contain a clause forbidding the courts of the district from granting any injunction against the trustees taking possession of the cemetery?

A. The original bill, according to my recollection, contained an express provision that the trustees should be amenable to the jurisdiction of the courts of equity of the District of Columbia in the administration of the affairs of the cemetery, and that the equity court should determine what proportion of the sales of the lots should be paid over to the original proprietors, and what amount should be appropriated to maintain and carry on the cemetery, by the provision requiring the protection of all rights in the cemetery, and that for purposes of burial the trustees should not be interfered with nor obstructed in the possession of the cemetery by injunction on application by the original proprietors. I speak from recollection only, not having seen the original bill for more than two years, and may
244 not be strictly accurate, but I think this statement is substantially correct.

Cross-int. 13. Were you present at the meeting on 7th of March, 1877 (the meeting of the lot owners), when the first trustees were elected?

A. I think I was, but am not certain.

Cross-int. 14. Was Mr. Winfield there as the representative of Mr. Close, and if so, did he claim the right to vote in respect of certain lots in the cemetery?

A. I am not confident that I was present at the first election of trustees which took place in March, 1877, but I am very certain that I never was present at a meeting of the lot owners at which Mr. Winfield was present to vote on behalf of the original owners. I have heard that Mr. Winfield did appear at one meeting of the lot owners to represent Mr. Close or the original proprietors, but that took place at a meeting when I was not present.

T. W. BARTLEY.

Sworn to and subscribed before me this 29th day of July, 1878.

JOHN N. OLIVER,
Examiner in Chancery.

Adjourned to July 30, 1878, 1½ p. m.

JULY 30, 1878, 1½ P. M.

Met pursuant to adjournment. Owing to the illness of Mr. Bartley, and by consent of Mr. Wilson, counsel for defendant, adjourned to July 31, 1878, 12 m.

JULY 31, 1878, 12 M.

Met pursuant to adjournment; present, Hon. T. W. Bartley, of counsel for plaintiffs, and Mr. N. Wilson, of counsel for defendants, whereupon—

ANTHONY BUCHLEY, a witness of lawful age, being duly sworn, deposed as follows, in answer to questions by Mr. BARTLEY:

Int. 1. State, if you please, your place of residence and your occupation?

A. 912 Penn'a avenue, NW., Washington, D. C.; occupation, undertaker.

Int. 2. How long have you been engaged in the business of an undertaker?

A. About, or a little more than 27 years.

245 Int. 3. How long have you been acquainted with Glenwood Cemetery and its management, and how frequently have you been in the habit of seeing it?

A. Since its organization or dedication. Sometimes I would probably be there 3 or 4 times a week, and sometimes once or twice a week, and then again I might not be there for 2 weeks or a month. My occasion of seeing it was in the course of my business as an undertaker.

Int. 4. State, if you please, how the cemetery was managed, and whether it was managed to the satisfaction of the lot owners and persons who were making burials there?

A. It was managed by Mr. Clendenin. I never knew of any body managing it except Mr. Clendenin; on the contrary, I have had persons come to me and ask who the board of managers were. If there was a board of managers there I do not know who they were. I never heard of them. I have heard a great many complaints. One serious complaint was that Mr. Clendenin would do just as he pleased. I have known cases where persons would have dead in the cemetery vault—the time would be appointed for the grave to be ready and the burial of that body. If the parties were not there in fifteen minutes after the time named the body would be put in the ground and buried. I have heard others complain of planting flowers on the graves or in the lots where their friends or relatives were buried, and they would go there in a few days afterwards and find them pulled up. They would repeat the experiment with a like result. One lady told me she had repeated this the second time with that result. I do not know her name. That was the occasion of her asking me who the board of directors were, in order to represent the matter to them. I told her if she found out who the directors were to let me know, as others had made the same inquiry, and that I did not think she would find any directors, but if there were any I would like to know it. An-

other cause of complaint was, that parties have been charged 10 per cent. interest on their notes when they made no agreement to pay over 6, and the ground they took for the objection was, the law only allowed 6 per cent. unless by mutual agreement. In the note itself, after stating with interest, without stating the amount of interest, on the end of each note shown to me would be printed the words, if not paid at maturity 10 per cent. interest will be charged from date, which they contended was no part of the note, hence their complaint. I have heard two persons complain that they
246 had been a second time required to pay for a site that they had paid for before. One of these, Morgan Waters, who worked with me at the time he buried a child—when he lost his first child he bought a site and paid for the digging. He afterwards lost another child and went to the cemetery to make arrangements to have it interred in the same grave with the first child that died, supposing that he would only have to pay for reopening or digging the grave. Before he was allowed to bury that child in the same grave with the first one he was compelled to pay for the site a second time. Complaints were general.

(Mr. Wilson objects to the question, and so much of the answer as is hearsay.)

Int. 5. State, as near as you can, how long have these complaints been made, and how soon after the cemetery commenced, and how long after the dedication of the grounds before you heard complaints of its management.

A. I have heard complaints during the last ten years; I heard the first complaint certainly 10 years ago; I might have heard them before, but cannot say certainly.

Int. 6. Have you stated all the different forms of complaint about the management of the cemetery that you had before spoken of within your recollection?

A. I remember a number of complaints such as I have stated, where Mr. Clendenin would go into their lot and cut down flowers, because he said they were objectionable. I have heard persons complain that they could not even borrow a watering pot to water the flowers or graves. It would be impossible for me to particularize all the forms of complaint I have heard made.

Int. 7. How long ago was it that these complaints among the lot owners and other persons interested became general?

A. As to when they became general I do not know; I only know when they came to me and so far as they came to me.

Int. 8. You have stated above that these complaints about the management of that cemetery were general; about how long ago was it that these complain's became general within your knowledge?

A. Certainly for ten years past, as near as my memory serves me.

Int. 9. Have you any knowledge or information of the lot owners holding meetings to consult about the manner of securing their rights in Glenwood Cemetery before the movement of the lot owners for an amendment to the charter?

247 A. Not of my own knowledge; I was informed that such a meeting was to be held, but do not know whether it was held or not.

(Question and answer objected to by Mr. Wilson.)

Int. 10. How long ago was that?

A. I am not sure, but think it must have been 3 or 4 years ago.

Int. 11. Have you any further information in relation to the management of Glenwood Cemetery?

A. Not that I particularly remember just now.

Cross-examination by Mr. WILSON:

Cross-int. 12. Give the name of the persons who made the complaints that you have spoken of.

A. One name I have already given, and promised to get another if you wish it; the names of the others I did not get, because I did not suppose I would be called upon for them.

Cross-int. 13. You can give no name now except that of Morgan Waters?

A. None except I have already given.

Cross-int. 14. Have you given any other name than that of Morgan Waters?

A. I have not.

Cross-int. 15. Can you give any other name than that of Morgan Waters?

A. I cannot at this time but can at a future period.

Cross-int. 16. Had you made any complaint of the management of the cemetery on your own account?

A. I have frequently complained to Mr. Clendenin himself of his actions and conduct.

Cross-int. 17. What was your cause of complaint?

A. One was the manner and fact of only allowing 15 minutes' grace for the family and friends to be present, otherwise the body would be placed in the ground. Another was, at the time of a funeral when the body was placed in the vault, in persisting in placing the body after being put in the case, on the shelf of the vault, notwithstanding the noise unavoidably made, even when requested to leave the body on the vault floor, and let his men place it on the shelf of the vault after the family and friends had departed. Another cause of complaint was, refusing to dig a grave an extra depth when desired, although payment was tendered him for the extra labor, and only within the past 2 years could I induce him to dig a grave extra depth.

248 Cross-int. 18. Have you any other cause of complaint against him?

A. I do not think of any other at present.

Cross-int. 19. How many times did it happen that bodies were interred after waiting 15 minutes beyond the time appointed?

A. You certainly could not expect me to answer that question. Nobody under heaven could answer that except Mr. Clendenin. My attention was called to at least 3 or 4 cases, and I spoke to Mr. Clendenin about the matter, and he informed me that that was his rule, and if parties could not get there in 15 minutes after the time, he intended to bury the body. On two occasions when requested by the families of deceased parties to make the necessary arrangements for the burial of their dead from the public vault, in making the arrangements with Mr. Clendenin, knowing his rules and regulations in regard thereto, I cautioned him not to place the bodies in the graves unless the families were present. He then stated

that it would be necessary for him to refill the graves, and asked me at the same time what he should do with the body—if he should take it back to the vault. I told him no, not to take it out of the vault until the families arrived, as the families wished to see the body go in the grave themselves, and not to have him tell them he had put it there.

Cross-int. 20. Did Mr. Clendenin never wait for you more than 15 minutes after the time appointed for burial?

A. Undertakers are not usually present on those occasions, and if Mr. Clendenin ever waited for me, it was under just such special arrangements as have just been stated.

Cross-int. 21. Your testimony then relates to the burial of bodies removed from the vault and not to funerals?

A. All in regard to the 15 minute arrangements.

Cross-int. 22. How often did it happen that Mr. Clendenin insisted in putting the body on the shelf instead of letting it remain on the floor?

A. So far as my own personal knowledge extends I never knew him to do otherwise. I have even been requested by families not to have the body of their deceased placed on the shelf at the time of the funeral. I have communicated that request to Mr. Clendenin, but he would persist in placing the body on the shelf, and he, being determined to have his own way, I ceased to bother him with any such request, similar requests having been made not less than 3 or 4 times, and for the reasons stated I ceased to bother him.

249 Cross-int. 23. But aided him, did you not, in putting the body on the shelf?

A. Most assuredly, in order to avoid making any more noise than could be helped.

Cross-int. 24. How many times did he refuse to dig graves an extra depth?

A. Certainly 3 or 4 times, and being refused I ceased to make such request until the lot holders were endeavoring to have the charter of said cemetery revised and amended, during which time I renewed the request, and had, I think, 3 graves dug extra depth.

Cross-int. 25. When were the graves dug extra depth?

A. To give you the date I would have to go to my books, the first one being the occasion of the burial of Mr. Mullikin, as well as I can now remember.

Cross-int. 26. Don't you know that all graves were dug an extra depth after Jan'y 1, 1872?

A. No, sir; I do not. Previous to the date named in the question the usual depth in that cemetery was 5 feet, after which date one additional foot was added to the depth, making 6 feet, and said 6 feet is the usual depth in most other cemeteries for the grave of an adult; therefore 6 feet was the regular depth for the grave of an adult in that cemetery.

Cross-int. 27. Have you ever had occasion to complain of the management of the superintendent of the Congressional Cemetery?

(Objected to by complainant's counsel.)

A. I have never made any formal complaint against the superintendent of the Congressional Cemetery. I have, however, appealed from his decision in the matter of purchasing single sites in the single-site portion of said cemetery.

Cross-int. 28. Have you ever found fault with the management of the superintendent of Congressional Cemetery?

(Objected to by complainant's counsel.)

A. Only in my individual capacity, without making any formal complaint. I have found fault with some little things he has done, about which he and I differed.

Cross-int. 29. Didn't you find fault and make complaint to the trustees of the Congressional Cemetery, and did not they say or write to you that the superintendent could attend to his own business, and that it would be well for you to confine yourself to your business as an undertaker, or words to that effect?

250 (Objected to by complainant's counsel.)

A. Emphatically no, sir. No such letter was written or sent; no such language used or ever received by me. And the only occasion, according to the best of my recollection, that I ever appealed to the vestry of Christ's Church (they are the managers) was on the occasion heretofore referred to, and their answer to said communication was gentlemanly and courteous, and I have no doubt they have a copy of said answer on their records.

Cross-int. 30. Have you ever found fault with or complained of the management of the superintendent of Oak Hill Cemetery?

(Objected to by complainant's counsel.)

A. In reference to Mr. Blundell, he preferred charges against me before said board, and said board on his representation adopted a resolution which was communicated to me. Immediately thereafter I had an interview with said board. The result of said interview was a special meeting of the board, at which meeting said resolution was expunged, and I was allowed to word and write the expunging resolution. The next one was Mr. Barker; during the time of Mr. Barker I did appeal to the board against a resolution of said board, which the board reaffirmed but have never enforced. I made no charge against Mr. Barker. During the time of Mr. Freeman I desired to have a grave dug a certain depth. He refused to do so. I appealed to Mr. Matthews, president of the board, who gave the necessary order, and the grave was dug as desired. I name them all to show that I have no complaints against any of them.

Cross-int. 31. Didn't Mr. King, or the managers, complain of you, or say to you that you were officious and intermeddling in relation to the management of the cemetery?

(Objected to by complainant's counsel.)

A. They never said it to me, nor did I ever before hear it said or intimated that they or any of them had ever said any such thing.

Cross-int. 32. What has been the general condition of Glenwood Cemetery since you have known it?

A. You have got to make your question more pointed before I can answer that.

Cross-int. 33. What can you say as to the general management of the superintendent of Glenwood Cemetery?

251 A. In reference to the management in the grounds, and without reference to the pecuniary management, Mr. Clendenin was one of those who would when he would and who wouldn't when he wouldn't, and persuasion was utterly useless.

ANTHONY BUCHLY.

Sworn to and subscribed before me *the* July 31, 1878.

JOHN N. OLIVER,
Examiner in Chancery.

GEORGE W. COCHRAN, being duly sworn on the part and behalf of the plaintiff, in answer to questions by Mr. BARTLEY, deposed as follows:

Int. 1. State your place of residence and occupation.

A. Washington, D. C.; merchant.

Int. 2. Are you a lot owner in Glenwood Cemetery, and if so, how long have you been a lot owner and known of its management?

A. I am a lot owner and have been since the spring of 1874, and have known of its management.

Int. 3. Have there been complaints made in regard to the management of matters in the cemetery by Mr. Clendenin, superintendent, and if so, how long is it since such complaint became common among the lot owners?

A. To that question I can only answer vaguely; that without being able to specify time, place, or individuals, I have heard for the last 8 or 10 years unfavorable criticisms in regard to the rules and regulations laid down by Mr. Clendenin. Whether just or unjust I do not know.

Int. 4. What relation do you fill at this time to the present organization of Glenwood Cemetery?

A. I am one of the trustees elected under the amended act of incorporation by the lot owners, and am secretary of the board of trustees.

Int. 5. Were you present at the first election of trustees under the amendatory act for the temporary organization held on the 7th of March, 1877?

A. I am not competent to answer that question; my impression is that I was not there.

Cross-examination by Mr. WILSON:

Cross-int. 6. Has the general condition of the cemetery and the general management of the superintendent been satisfactory to you as a lot owner?

252 A. As far as my personal intercourse with Mr. Clendenin has been concerned it has been cordial and friendly. As far as Mr. Clendenin's attention to my piece of ground there is concerned, I never had one word of fault to find; but in answer to the question as to the general condition of the ground, I do not think for the past 5 years at least that the necessary time, attention, and money has been bestowed upon it to keep it in the condition a cemetery should be, or what those purchasing ground out there had a right to expect, and I believe that had there been a death in my family any time within the last 5 years I should have abandoned the cemetery.

Cross-int. 7. In what respect was there neglect of the grounds?

A. They were not properly kept, the grass was not cultivated nor cut properly, and there is literally no grass in that cemetery to-day; it is a parched, burnt, barren place; I saw more of it last Sunday than I ever saw before; I do not blame this to Mr. Clendenin, because I do not know that it is his fault; I only speak of the facts as they exist.

Redirect by Mr. BARTLEY:

Int. 8. You say that you have had no personal dissatisfaction yourself with Mr. Clendenin. Please state whether the lot owners generally, as far as you have heard, do make complaints of dissatisfaction with Mr. Clendenin?

A. I think the lot owners generally, so far as I know, do complain of Mr. Clendenin?

Recross-examination by Mr. WILSON:

Cross-int. 9. What do they complain of?

A. I think, as far as my memory serves me, that the great complaint of the lot owners was that they were not permitted to plant flowers and improve their lots in their own way by themselves; that what was to be done had to be done by or through Mr. Clendenin, and they thought his charges excessive.

By the WITNESS: Upon reading over my deposition and before signing it, I desire to state in connection with my answer to cross-int. 6, wherein I state that my relations with Mr. Clendenin were of a kind character, that I had for years given him general directions to take care of my two lots in Glenwood Cemetery, and bring in his bill whenever he felt like it for payment, and I did pay his bills, which ranged annually from $12 to $15.

By Mr. BARTLEY, counsel for pl'ffs:

253 Int. 10. As secretary of Glenwood Cemetery will you please attach to your deposition a full transcript, from the records of the cemetery company, of the proceedings of the lot proprietors in the cemetery in organizing under the amendment of the charter, and also the proceedings of the trustees of the cemetery, under the amended charter, from the time of the enactment of the law amending the charter to the 30th of June, 1877?

A. I present here a correct transcript from the record book of the company, according to the best of my knowledge and belief, having compared the same with the original recorded proceedings in the record, and in attestation of which I have attached my signature and affixed the seal of the company thereto; which transcript, for indentity, is marked Exhibit A, in my deposition.

GEO. W. COCHRAN.

Sworn to and subscribed before me this 16th day of September, 1878.

JOHN N. OLIVER,
Examiner in Chancery.

(The transcript is in the original deposition.)

AUGUST 1, 1878—12 m.

Met pursuant to adjournment. Present, Mr. Bartley, of counsel for plaintiff, and def't Clendenin.

Mrs. LUCY A. POTTS, being duly sworn, in answer to questions by Mr. BARTLEY, deposed as follows:

Int. 1. Please state your name and place of residence, whether single or married, and the occupation of yourself and husband?

A. Lucy A. Potts; I reside at No. 910 New York avenue, Washington, D. C.; I am married to Joseph E. Potts. My husband is a clerk in the Navy Department, and I am keeping house for him. My husband was formerly a lawyer in practice in the State of New Jersey.

Int. 2. State whether you and your husband are the owners of any lot or lots in the Glenwood Cemetery, and if so, about what time you became such lot owner?

A. I think it was about 24 or 25 years ago. It was the first winter after Glenwood was dedicated. I think it was dedicated in August, 1854. We bought a single site lot that winter and buried a child there, and some years, a few years after, I cannot recollect, we bought 4 site lot there—three of us united and bought a full lot and divided it up between us. Mrs. Beach bought one part; Mr. Hackett bought one part, and we took the other part and divided it up between us.

254 Int. 3. State if you please, whether Glenwood Cemetery has been conducted and managed to the satisfaction of the lot owners or not; and if not, how long the dissatisfaction or complaints, if any, have been made?

A. Well, for 10 or 11 years myself and several of my friends have been very much dissatisfied. So far as I know the lot owners, and I know a good many, this dissatisfaction has been general. For the last 5 or 6 years they have been very much dissatisfied.

Int. 4. Can you state whether Mr. Clendenin, superintendent, knew of, or had reason to know of this dissatisfaction of the lot owners for the past 5 or 6 years?

A. I should think so, from what I saw. I told him I was dissatisfied long ago. I cannot state about others, but from what I saw when I was out there I thought they showed it very plainly to Mr. Clendenin.

Int. 5. Please state the grounds of such dissatisfaction, so far as the same fell under your observation or came to your knowledge through others?

A. Well, my own; my flowers were put on the graves of the four children I have buried there, and every time I put them there they were mowed down with the grass. After I lost an infant in 1854 or 1855, I buried 3 daughters; all since 1861. For 4 or 5 years I was in the habit of planting flowers there, and they were generally cut down about the same season I planted them there. I entered complaint about it to Mr. Clendenin, and he told me why didn't I hire somebody to take care of them. I spoke to him two or three different times about it, and he got very angry about it. He told me I could buy more, and I told him money did not grow on trees. Two of my sons were present once when I spoke to Mr. Clendenin, but unfortunately they are both dead. When he got mad he spoke very abruptly and ugly. I cannot give the exact words, but they were very ugly and insulting, so that my son remarked when we passed on: "Mother, you don't spend enough money here for Mr. Clendenin." In this conversation Mr. Clendenin gave me no satisfaction, and did not claim the flowers were cut down by accident. After I had planted flowers there 4 or 5 years I ceased planting them there because they were cut down. I ceased planting flowers there about 1867, and have never planted any there since, and have been dissatisfied ever since. My sons requested not to be buried out there, nor to take any of the family out there. We have

255 lost 3 grown up sons since, and we bought a lot at Oak Hill 5 years ago, and they (my sons) are buried there. I have been waiting for this controversy about Glenwood Cemetery to be over in order to determine whether to move my children from Glenwood over to Oak Hill or not.

Int. 6. Can you state any other acts of Mr. Clendenin which you observed yourself in regard to his conduct in the cemetery?

A. I have been out there once or twice with a friend of mine when

there were funerals, when I did not think he acted altogether right. Me and my friend both thought he was in liquor; we were both lookers-on.

Int. 7. What complaints, if any, have you heard in relation to Mr. Clendenin's conduct in the cemetery?

A. I have heard a good deal, but I did not pay much attention to it, for we were getting out of it. I have heard others—a number of people—come in and say they wished they could afford to get a lot somewhere else. I have heard some pretty heavy complaints found with him in one case—a family connection of mine—a lady whose name was Miss Fenton, and her sister, Mrs. Myers, and her mother, Mrs. Fenton; Miss Fenton was buried there, and her sister, Mrs. Myers, and her mother, Mrs. Fenton, stated that Mr. Clendenin treated them very unkindly. Mrs. Myers stated that when her sister, Miss Fenton, was taken out of the vault her mother asked to see the dead body, and Mr. Clendenin refused to let her do so; he told her she would be sorry she had ever seen it, and Mrs. Myers told him she would take the responsibility, but he utterly refused to let them see the body, and the body was buried without their seeing it. Mrs. Myers wanted the box opened to see whether the body was there or not, and her mother wanted to see her daughter before she was put away, so Mrs. Myers told me herself, but Mr. Clendenin would not let them see it, and she said she wished they had never bought the lot.

Int. 8. Have you received any communication from any person in relation to Glenwood Cemetery?

A. I received an anonymous letter, which I here produce; it is signed M. A. Smith; I know no such person; I received it through the post-office about the date of the letter; the letter is hereto attached, and marked "Exhibit M. A. S." The statements in the letter are fictitious and untrue, and I cannot see what the object was, as I had ceased to have any-
256 thing to do with Glenwood Cemetery for years. I received the letter about the time of the commencement of proceedings to amend the charter. I do not know whose handwriting it is; I never saw Mr. Clendenin write, and do not know his handwriting; I think the letter is written in an assumed handwriting; I have shown the letter to a great many persons in order to find out whose handwriting it is, and my son has shown it to a number of persons, but we could not find out who wrote it.

Cross-examination by Mr. CLENDENIN:

Cross-int. 9. You say, Mrs. Potts, that this general complaint has been for the last 8 or ten years; can you name any persons who have made these complaints? and, if so, specify them.

A. Mr. McKinney was one; the old gentleman's family and the young ones altogether. Mr. Griffith's married daughter, Mrs. Taft, who had been out there a great deal, and I had been with her; and Mrs. Harvey, from St. Louis, who buried her husband there, and who always stops with me when she comes on here; those are the ones I heard make complaints years ago. I have heard others—my neighbors—come in talk about being dissatisfied, but cannot specify them now.

Cross-int. 10. What were their complaints?

A. Well, they said their flowers were out down. Mrs. Harvey said her flowers were cut down, and Mrs. Taft said she had put out flowers on

her sister's grave and they had been taken up bodily. I went out with her and helped her to put out some twice, but I do not know what became of them. She (Mrs. Taft) said that they had been taken up.

Cross-int. 11. Were Mr. McKinney's also taken up?

A. No, sir. I did not hear them say anything about it. Their grounds of dissatisfaction were general, no special ground of dissatisfaction.

Cross-int. 12. You say, Mrs. Potts, that you planted flowers for some 4 or 5 years after your two daughters died in 1862, and that when you spoke to me (Mr. Clendenin) about it I replied rudely and insultingly about it, and asked you why you did not employ somebody to take care of them. Do you mean to tell the court that after I had treated you rudely to a civil question that you would accept an invitation from me to attend a place of amusement as late as 1873?

A. I did it for the sake of the lady you first asked to go. She
257 persuaded me to go. She was a lady friend of mine, and persuaded me to go. I think there were four of us in the party and Mr. Clendenin. The place of amusement was a panorama of Ireland in paintings.

LUCY A. POTTS.

Subscribed and sworn to before me this 1st day of August, 1878.

JOHN N. OLIVER,
Examiner in Chancery.

Miss EUNICE L. FOSTER, being duly sworn, in answer to questions by Mr. BARTLEY, deposed as follows:

Int. 1. State your place of residence.

A. 940 P street, in the city of Washington, D. C. My parents are both dead. I am boarding.

Int. 2. State whether you have any interest in Glenwood Cemetery; and, if so, when it commenced.

A. I and my two sisters own a lot in Glenwood Cemetery, where our parents and also two brothers are buried. We became the owners of the lot in 1870.

Int 3. State what you know and have heard in regard to the manner in which the cemetery has been conducted since you have been connected with it.

A. I do not think it has been kept in good condition, and do not think that any one visiting it would say so. I planted at different times roses and hardy plants in our lots, at 4 or 5 different times, and they were usually cut or destroyed. I generally planted them once a year—they never came to anything.

Int. 4. State, if you please, what complaints, if any, you have heard made among the lot owners, and whether those complaints were common and general, and when you first heard them.

A. I have heard them for the last 4 or 5 or 6 years, since I have been going to Glenwood Cemetery often. So far as my acquaintance among the lot owners extended, the complaints were common and general. One of the complaints was that they could not plant shrubs or plants on the graves of their friends without having them cut down; that was a general complaint. In individual cases he was paid for taking care of plants and flowers on the graves, so much a month. A year ago, Mr.

Bradley put up a monument there for us, and I wished him to lay the foundation and all, and I found out that Mr. Clendenin claimed
258 the right to do it, and I had to make arrangements to that effect.

Among the complaints that I heard made was one that Mr. Clendenin was intemperate in his habits.

Int. 5. State whether any special directions were given for the place where a brother was buried, which was not observed in the digging of grave, in consequence of which the body was buried in the wrong place.

A. On Sept. 3, 1876, the undertaker came for directions, and he seemed to fully understand the situation of our lot and understand where we wished the grave dug, but to be perfectly correct, my father requested me to go with the undertaker, which I did, and we gave the directions to Mr. Clendenin's son, a small boy, where the grave was to be dug, and the undertaker stuck a stick in the place where the grave was to be dug. The boy was a bright boy, and said his father frequently left him in charge of the place; Mr. Clendenin being absent at that time. The piece of ground alongside my mother's grave was desired to be reserved for my father, but no attention was paid to the special instructions about where to dig my brother's grave, and his grave was dug alongside my mother's, where we did not want it.

Cross-examination by Mr. CLENDENIN:

Cross-int. 6. Did you make a bargain with Mr. Bradley for that monument?

A. Yes, sir; for a specified sum.

Cross-int. 7. Did you afterwards have to pay extra for that foundation?

A. I could tell if I looked at the bill. I do not remember.

Cross-int. 8. Name any one or more persons who told you that I am intemperate or that said they ever saw me so.

A. I could name them, but do not want to. I heard Mrs. Potts say so to-day. I have heard several more say so heretofore.

EUNICE L. FOSTER.

Sworn to and subscribed before me this 1st day of August, 1878.

JOHN N. OLIVER,
Examiner in Ch'y.

Adjourned to August 2, 11 o'clock a. m.

259 AUGUST 2, 1878—11 o'clock a. m.

Met pursuant to adjournment. Present, Mr. Bartley, of counsel for plaintiff. No counsel for defendants, but defendant Clendenin present in person; whereupon—

THOMAS S. MCNEIR, a witness of lawful age, produced, sworn, and examined on the part and behalf of the plaintiff, deposed as follows in answer to questions by Mr. BARTLEY:

Int. 1. Please state your place of residence and occupation.

A. My residence is 1427 Q street NW., Washington, D. C. I am engaged in prosecuting claims before the government departments.

Int. 2. State whether you are a lot owner in Glenwood Cemetery; and,

if so, about what time you became such lot owner, and what means you have had of observation in regard to the manner in which the cemetery has been conducted.

A. I purchased a lot in Glenwood Cemetery in June, 1857, and have been a lot owner ever since, something like 21 years. Since I have been a lot owner there I have been in the habit of visiting the cemetery mostly every Sunday afternoon and frequently during the week. I have had five burials in my lot; the first was my father, who was buried on the 14th day of June, 1857; the next interment was my daughter, 18 years of age, on the 6th day of August, 1866. Besides those named I have my mother, my wife and another grown daughter buried in the same lot.

Int. 3. State, if you please, how the cemetery has been managed since your acquaintance with it, as to the satisfaction of the lot owners.

A. My general observation of it has been that the cemetery has not been managed in a way that the lot owners had a right to expect, from the fact that the grounds were in a very neglected condition, the avenues or walks were in winter almost impassable on account of mud, and in summer from sand and dust. The gutters were in a dilapidated and worn condition and still remain so. The walks leading to the lots in the center of the sections have been allowed to be overrun by grass and are barely discernible, even by the aid of the pegs placed there to mark them, so much so that they look as green as the lots. In addition to that
260 the portion of the ground not sold to lot owners has been used for the cultivation of hay, and allowed to grow as high as it would grow and cut down, cured, and stacked up and carted off and sold, I suppose. There was a large portion of the cemetery ground used by the superintendent as a vegetable garden, in utter violation of the terms of the charter, which allowed it to be used for cemetery purposes alone. The general grounds were conducted in such a manner as to cause general dissatisfaction among the lot owners. I made it a point to get the views of the lot owners generally, who concurred with me that the grounds were very much neglected and the lot owners imposed upon. Notwithstanding they were subjected to this great inconvenience they knew of no higher authority than Mr. Clendenin to appeal to, there being no board of trustees here.

Int. 4. State, if you please, how long this general dissatisfaction among the lot owners has prevailed.

A. Well, I should say it has extended back at least 10 years, during which time it has increased very much.

Int. 5. Have the lot owners discussed the subjects among themselves in holding meetings to consult about the mode of protecting their rights of the cemetery; and, if so, how long is it since that matter was first talked of?

A. Within four or five years I have conversed with a great many lot owners, and have been requested by a number of them at different times to call a meeting of the lot owners, through the public paper, with a view of seeking redress.

Int. 6. What was the custom of the superintendent, Mr. Clendenin, as to allowing lot owners to ornament the graves of their deceased friends with flowers and shrubs without extra pay to him or his son for taking care of them?

A. I never experienced any opposition on the part of Mr. Clendenin in regard to planting shrubbery on my lot. So far from protecting the lots, I have had my rose bushes cut down or destroyed a dozen times, perhaps, and some entirely destroyed from their repeated cuttings during the summer, so much so that they would die. On one occasion a flower or plant that I prized highly was taken up by the roots and carried away. I was annoyed very much at the burial of the last daughter I had buried there, by the carrying away of three separate costly boquets, or wreaths of flowers, that were left upon her grave, between Wednesday and the following Sunday. I employed a man and went with him myself, and dug a
261 border around and inside the line of my lot, with a view of planting flowers, shrubbery, &c., which I did do. I derived very little pleasure from the cultivation of them, from want of facilities for watering them, and finally abandoned the cultivation of them. I discovered that I could not do so without paying a large price to Mr. Clendenin or his son taking care of them, a tax I did not feel inclined to subject myself to. I afterwards, on one of my visits there, found that the border I had dug around the bed had been leveled with the surface with red clay, rendering it wholly uncultivatable. It was poor enough at first and that made it worse. I employed Mr. Clendenin on one occasion to resod my graves, which was done. The character of the sod was such, having been taken, as I supposed, from a marsh or low land, that they died the first hot sun that came on them, certainly during that season. I suppose it was owing to the thinness of the sod. It was only about an inch thick, and large jack-stones adhered to the fibers or roots, the dirt having washed off.

Int. 7. State what you observed in these regards as to the graves of other lot proprietors.

A. I have been told by a number of lot owners, whose graves were in a very worn and washed condition, that they would not pay for having the graves resodded, in consequence of the inferior quality of the sod used and the manner in which the work was done. I have heard a great deal of complaint about shrubbery being cut down, and notably one occasion. I was passing through the cemetery grounds, and heard a gentleman and his wife, whose name I did not know, expressing a great deal of regret at the fact that the tops of some evergreens that stood in the corner of their lot had been cut off. I have known of other persons who were disheartened and stopped ornamenting their grounds because of the annoyance they were subjected to in having their flowers and shrubbery cut down. As to the evergreens that were topped, they were some species of an evergreen, and one was planted in each corner of the lot. The man complained most bitterly at having his evergreens injured in that way, the top of each one of them having been cut off. It was a source of grief between him and his wife that the act had been done. I told him I did not know what redress he would have; that if Mr. Clendenin did it or had it done, or allowed it to be done, that he exercised exclusive control over every part of the cemetery, and I knew of no power superior to him
262 to appeal to. I think it was also suggested that the lot owners ought to hold a meeting to seek redress.

Int. 8. State what you know about representations having been made by Mr. Clendenin to lot purchasers on the subject of the whole 90 acres having been dedicated and constituting the cemetery, although 30 acres only had been laid off into lots.

A. I have no knowledge of what he told others. When I purchased my lot, which is very near the northern boundary of the 30 acres which had been laid off in lots, I hesitated somewhat on account of its being so near the edge of the cemetery as it then was. Mr. Clendenin told me that should not be an objection; that the other part belonged to the cemetery, and would be laid out as the needs of the cemetery required, and that then my lot would be near the centre of the cemetery, creating the impression upon my mind that the whole grounds were regarded as a cemetery, but was not used because there was no occasion for it at that time. This was about 4 years after the cemetery had been first established.

Int. 9. State how the 60-acre part of this 90 acres of ground has been used; whether it has been rented out, offered for sale, or simply used as incidental to the purposes of the cemetery, being made the place for the superintendent's house and cultivated as a part of his perquisites.

A. I have never known it to be offered for sale or rented. So far as I know, it has always been used as the residence of Mr. Clendenin, and as far as my knowledge extends, and I believe, cultivated and grazed by him. I have never known any other entrance to it except through the cemetery gate. I have seen Mr. Clendenin's carriage going to and from it through the cemetery gate.

Cross-examination by Mr. CLENDENIN:

Cross-int. 10. You say you have been to the cemetery mostly every Sunday and some time during the week. Then you have been a pretty constant visitor, haven't you?

A. I have visited there, I have no doubt, more than the average number of lot holders have done. I did not intend to say that I had been there every Sunday. What I meant to convey was that it was my rule to go there every Sunday, but was interfered with by excessive heat, excessive cold or rain; of course these were exceptions.

263 Cross-int. 11. You say that a piece of garden has been cultivated there in violation of the charter, and that you suppose it was exclusively for my benefit. I suppose you come to that conclusion because you were not a recipient of any of the product there?

A. I will excuse your attempt at sarcasm, and proceed to answer the question. So far from being the recipient of anything from you, I conceive that you have deprived me of rights and privileges that I ought to have enjoyed as a lot owner. The original charter, as I understand it, says that the grounds shall be used for the purposes of sepulchre, and none other. This may be the provision in the regulations, and not the charter. In violation of which a considerable portion of the ground, binding upon the northern line of the cemetery as now laid off, and within its enclosure, was used as a truck patch or garden annually for a number of years, bean-poles on it a number of feet high, and vines, &c.

Cross-int. 12. Did you read the rules and regulations furnished to you by me when you purchased your lot which gives you the right to cultivate plants, shrubs, &c.?

A. I presume I did, and proceeded under those rules to cultivate plants and shrubbery, but soon discovered that my efforts to cultivate them was a fruitful source of annoyance instead of pleasure, caused by the negligence or carelessness of Mr. Clendenin, who destroyed them whenever he attempted to cut the grass from the lots, by carelessness and negligence.

Int. 13. You have never been charged for the cutting of the grass from your lot 84 times, or the raking of the leaves 42 times, fall and spring each year, or the pruning of your shrub' by a professional pruner who is paid for that service, during the 21 years you have been a lot owner there, have you?

A. I answer that by saying that if such service has ever been performed, payment has never been demanded of me, and consequently I have never paid for it. I have no knowledge of any such service being performed.

Cross-int. 14. Do you recollect any person asking you what your difference with Mr. Clendenin was, and you told him that he had resodded four graves for you, and that when he presented his bill it was not convenient for you to pay at that time, but that some time after you had the misfortune to lose one of your family, and Mr. Clendenin exacted the payment of that bill at that time, according to the published rules of the
264 cemetery, and he (the party that asked you the question) remarked: "Well, I would have kept that to myself?" This was shortly after the amendment of the charter.

(Objected to by Mr. Bartley.)

A. No; and the implications in the question are calculated to convey erroneous impression.

Cross-int. 15. Did you ever ask me for any remedy of all these faults around the cemetery?

A. I have complained to Mr. Clendenin of depredations upon my lot. His whole tone and demeanor has been uncouth and uncivil, so much so as to deter me from making them as often as I otherwise would have done.

Cross-int. 16. You state that some 4 or 5 or 6 years ago there was a meeting called or proposed among the lot owners to protect their rights in the cemetery, and the propriety discussed of publicly announcing the meeting; was it published; and, if not, why?

A. For answer to this question I refer to my answer to int. 5.

Cross-int. 17. You say that the resodding was indifferently done, good for nothing; how long is it since you lost your last daughter?

A. It was in April, 1873.

Cross-int. 18. Is there any shrubbery on your lot now, or was there any when you last went to the cemetery?

A. There is some, but it has been dwarfed by ill treatment.

Cross-int. 19. Then it has not all been cut down?

A. My evidence will show that I never claimed that it had all been cut down.

Cross-int. 20. You speak of quite a number being disheartened; can you name any of them? and, if so, name them.

A. I can name some. I name Mr. Irving Barker, Mr. Joseph Platz, and could, perhaps, by reflection, name others; but these are all that come to my mind just now. Among all with whom I conversed, and I have conversed with a great many lot owners, they all, without an exception, condemned the management of the cemetery.

Cross-int. 21. I suppose you are aware that very few of the cemeteries out of the 16 places of sepulture in this District allow the lot holders the privilege of voting as to the management of its affairs, and also charge each and every lot owner for the care of the lot per annum?

(Objected to by complainant's counsel.)

265 A. I am utterly ignorant of the rules and regulatisns governing any cemetery in the District except Glenwood, never having heard any complaint of the management of any of them.

THOS. S. McNEIR.

Subscribed and sworn to before me this 2d day of August, 1878.

JOHN N. OLIVER,
Examiner in Ch'y.

Adjourned to August 3, 1878, 10 o'clock a. m.

AUGUST 3, 1878—10 a. m.

Met pursuant to adjournment. Present, Mr. Bartley, counsel for plaintiff.

WM. H. MORRISON, being duly sworn, deposes as follows in answer to questions by Mr. BARTLEY:

Int. 1. State your place of residence and occupation.

A. Washington, D. C.; bookseller.

Int. 2. Are you a lot owner in Glenwood Cemetery; and, if so, how long have you been such lot owner? And state the circumstances attending the same.

A. I am. I purchased three in 1858, and have been a lot holder ever since. I had two children buried there. One was buried in 1858 and one in 1862. My father, also, owned the adjoining lot to mine, and was buried on it in 1863. Some four children of his were buried on his lot.

Int. 3. State, if you please, whether the cemetery has been conducted to the satisfaction of the lot owners generally; and, if not, when was the dissatisfaction first manifested?

A. It has never been conducted to the satisfaction of a majority of them, in my judgment. I heard of it soon after purchasing, and was thoroughly satisfied myself that the title to the lots was worthless. About 1865 or 1866 myself and some others thought of going to Congress for an amendment to the charter, but postponed it for fear that it would be made a burying ground regardless of color.

Int. 4. State, if you please, the grounds generally assigned by the lot owners for the prevailing dissatisfaction.

266 A. Because of their want of confidence in the superintendent and having no board of trustees to appeal to, there being a constant stream of expenses and no care taken of the lots. Owing to this, I purchased at Oak Hill Cemetery, and removed the remains of all those buried in my lot and my father's lot to that place, just before the movement was commeneed to amend the charter of Glenwood.

W. H. MORRISON.

Subscribed and sworn to before me this 3d day of August, 1878.

JOHN N. OLIVER,
Examiner in Chancery.

DANIEL MCFARLAN, being duly sworn, deposed as follows in answer to questions by Mr. BARTLEY:

Int. 1. Please state your residence and occupation.

A. Washington, D. C.; I am a dentist by profession.

Int. 2. Are you a lot owner in Glenwood Cemetery; and, if so, how long have you been such lot owner?

A. I and my brother, W. S. McFarlan, represent the estate of my father, A. B. McFarlan, who died about 12 years ago. My mother died about at least 20 years ago, and the lot was purchased about that time. The lot was bought for her interment, which was about 1862, or perhaps previous thereto.

Int. 3. State, if you please, whether or not there has been any dissatisfaction among the lot owners in Glenwood Cemetery, or whether it has been managed to the entire satisfaction of the lot owners or not for the last 10 years?

A. Yes; there has been dissatisfaction; there has been no difficulty between the superintendent, Mr. Clendenin, and myself. My own lot has been managed to my satisfaction. I paid Mr. Clendenin about an average of $10 a year for taking care of the lot. But as to the lot owners generally I heard dissatisfaction expressed at least ten years ago. I was in consultation with lot owners about their difficulties in the cemetery on two different occasions. One of those occasions was a casual meeting of lot owners ten years ago at least. Mr. McKinney, of the clerk's office of the Supreme Court U. S., and Mr. John H. Bartlett were present. We consulted in the cemetery grounds on the subject of what security we had for our interests there. After-
267 wards a meeting of lot owners was called at Mr. McClelland's house, and I was present at the time specified. We consulted then about securing a voice in the management of the cemetery.

Int. 4. When your lot was purchased what information, if any, did you receive, as to the whole of grounds there, that laid out into lots and that not laid out into lots belonging to the cemetery?

A. I can say that when the lot was purchased I received information that the ground beyond the north portion laid out in lots belonged to the cemetery, and to the best of my knowledge and belief the information came from Mr. Clendenin.

DAN'L McFARLAN.

Sworn to and subscribed before me this 3d day of August, 1878.

JOHN N. OLIVER,
Examiner in Chan'y.

At 12½ p. m. adjourned to 2½ o'clock p. m.

2½ o'clock, *Aug.* 3, '78.

Mrs. ETHLAN O'BRIEN, being duly sworn, deposed as follows, in answer to questions by Mr. BARTLEY:

Int. 1. State your place of residence and your occupation.

A. Washington, D. C. I am living with my husband and keeping house. My husband was until lately in one of the departments.

Int. 2. Are you and your husband lot owners in Glenwood Cemetery; and, if so, how long have you been such owner?

A. We do own a lot in Glenwood Cemetery, and have owned it since 1861 or 1862.

Int. 3. State, if you please, how the cemetery has been conducted; what condition it has been in as compared with other cemeteries, and how

you have been treated by the superintendent, Mr. Clendenin, with regard to your lot in the cemetery.

A. It has not been conducted well in my opinion. I do not think it can be compared with other cemeteries in its management or the style in which it has been kept. There were general complaints among the lot owners so far as I heard; a good many of them speak of it as to
268 the manner in which Mr. Clendenin conducted the cemetery. I think these complaints were common among the lot owners, and have been for 4 or 5 years past. The lot owners complained that their flowers and shrubbery planted on their lots were cut down, and in a great many instances taken up by the roots. As to our own lot, I was in the habit of planting out flowers and rose-bushes on the lot. One year I spent $27, and had 9 white roses planted out on the lot. Some of these flowers and rose-bushes were cut down and pulled up, and to-day there isn't a dollar's worth on the lot. For the last few years I have ceased to do anything towards ornamenting the lot on account of the flowers and rose-bushes being destroyed. I had purchased a handsome monument of statuary marble in Baltimore, which was put up at the graves of 2 children on our lot, which cost $80. The mouument was handsomely carved and lettered. After the monument had been there several years it was mutilated by a nich being cut out of the side and front of it, which could only have been done by a hammer or the poll of an axe, and there was also a piece of the marble broke out of the front near the base. I do not see how this could have been done except by a hammer or some hard instrument. The place where the marble was struck was black, as if it had been by some hard instrument. I spoke to a marble man to see if it could be repaired, and he went out to examine it, and reported that the marble could not be repaired. He cleaned off the black and put on some white cement or plaster, but the beauty of the monument is destroyed. I spoke to Mr. Clendenin immediately after it happened, and he said he did not know how it happened, and could not be responsible for such things. The monument is not near a carriage-way or road, but nearly in the centre of a section. I thought this was done intentionally, for I cannot conceive how else the monument could have been injured. When I spoke to Mr. Clendenin about it he seemed indignant that I should call his attention to it, as he said he did not consider himself to blame. I called Mr. Clendenin's attention to my rose bushes and plants being cut down, and he said he could not help it; that he supposed it was done by the men in cutting the grass.

Int. 4. What kind of charges did Mr. Clendenin make for attending to your lot there, and did you pay all his charges?

269 A. His charges were for sodding the lot or graves, and sometimes both, and for manuring the lot. I think I paid him about every two or three years for sodding the whole lot, and about every other year for sodding the graves. For sodding the entire lot he would charge either $5 or $8, and for sodding the grave, $1. I have the bills at home, which would tell exactly, but I only speak now from my better recollection. When I had the lot so expensively planted in flowers and rose-bushes, as above spoken of, I think I paid him $3 the season for taking care of them, and, besides, I paid a colored man for watering them. Notwithstanding all this, they were cut down.

Int. 5. When your lot was purchased in Glenwood Cemetery, what were you told as to the extent of the grounds that composed Glenwood Cemetery?

A. When the lot was purchased, Mr. Clendenin furnished a printed pamphlet, and I always supposed the ground dedicated at the cemetery included the 60 acres not laid out, as well as the 30 acres laid out in lots, and I often said that when the other 60 acres were laid out in lots we would change our lot over there, where it was higher. There was one matter I omitted to state: I had paid Mr. Clendenin bills that he sent in at different times, except the last bill, which was a bill for manuring the lot and clearing or weeding the flowers in the beds. I went out and saw the manuring had not been done, and the flowers had been cut down and destroyed long before; so I refused to pay the bill. This last bill was presented more than a year ago. All the bills were drawn as "Dr. to Glenwood Cemetery." Another thing I will add here: Shortly after the lot was purchased I employed and paid Mr. Clendenin for making a border around and inside of the lot (the border was 12 or 18 inches wide.) It was spaded up and manured. Mr. Clendenin would not let anybody plant flowers or do anything on the lots, but claimed the right to do it himself and charged for it.

MRS. ETHLAN A. O'BRIEN.

Sworn to and subscribed before me this 3d day of August, 1878.

JOHN N. OLIVER,
Examiner in Chancery.

JOSIAH ESSEX, being duly sworn, deposed as follows, in answer to questions by Mr. BARTLEY:

Int. 1. State your place of residence and occupation.

270 A. Washington, D. C. I have resided in this city all my life, and retired from business some years ago, having reached nearly the age of 75 years.

Int. 2. Are you a lot owner in Glenwood Cemetery; and, if so, how long have you been such lot owner?

A. I am a lot owner in Glenwood Cemetery, and have been for about 8 years, I think.

Int. 3. State, if you please, whether the cemetery has been conducted and managed by Mr. Clendenin, the superintendent, to the satisfaction of the lot owners or not?

A. My idea is that it has not. I have heard many complaints for the past 5 or 6 years, at least. So far as I have known, this complaint was general among the lot owners and common talk.

Int. 4. State whether Mr. Clendenin, in his deportment and conduct, in the management of the cemetery, has shown himself to be a suitable and proper man for the charge of the cemetery.

A. I think he is rather uncouth and an improper man to hold that position, as he seems to be a dictator for the whole concern. He is arbitrary and impolite in every respect, and an unsuitable man for that place, according to my idea.

JOSIAH ESSEX.

Sworn to and subscribed before me the 3d day August, 1878.

JOHN N. OLIVER.
Examiner in Chancery.

Adjourned to Monday, Aug. 5, 10 o'clock a. m.

AUGUST 5, '78—10 a. m.

Met pursuant to adjournment. Present, Mr. Bartley, of counsel for plaintiff, and the defendant, Clendenin; whereupon—

DANIEL MCFARLAN, recalled, deposed as follows:

Int. 1. State what your recollection is upon the subject of Mr. J. B. Close's attorney appearing at meeting for the election of trustees by the lot owners, and demanding the right to vote at such election on behalf of Mr. Close for numerous lots in the cemetery upon which no interments had been made, and at which meeting of the lot owners to elect trustees that such occurrence took place, if it did occur at all.

271 A. I presided at but two meetings of the lot owners of the cemetery for the election of trustees. The last meeting of the lot owners for the election of trustees was held in June, 1878; I presided at that. The first annual meeting for the election of trustees was held the first Monday in June, 1877, at the board of trade rooms in Washington, D. C. I presided at that meeting also. At that meeting a stranger was present whom I was informed was Mr. Close's attorney, whose name I think was Winfield, but am not sure. He desired to be heard upon the affairs of the cemetery, but was declared out of order and was not heard. I do not remember now what proposition he made.

Int. 2. Were you present at a meeting of the lot owners for the election of temporary trustees on the 7th of March, 1877, and, if so, was J. B. Close represented at that meeting by any attorney who proposed to vote for him on account of vacant lots upon which no interment had been made?

A. I was present, and no such person was present to represent Mr. Close; if he was, he was silent; he was neither known nor heard by me. I was present at the entire meeting; nothing of the kind was proposed.

Cross-examined by Mr. CLENDENIN:

Cross-int. 3. I suppose you have minutes of that meeting on the 7th of March, 1877, when the temporary trustees were elected. Have you any recollection of ex-Senator Winfield from New Jersey asking the privilege to vote by proxy for Mr. Close, on no specified number of lots, in which were buried the remains of various unclaimed bodies which had previously been placed in the mausoleum, and which Mr. Clephane, now present, objected to, on the ground that Mr. Close might have votes enough to elect his own trustees? The question was afterwards put to a vote, and out of the number (54) present, about 21 voted to allow him the privilege to vote by proxy, the balance in the negative, and of course he was denied the privilege.

A. The secretary of that meeting should have minutes of that meeting; I have not got them; I did not preside at that meeting; I would reiterate my answer made above with the addition that Mr. Clephane was not present at the March meeting, but was present at the June meeting of 1877, at which I presided, and did object to that gentleman, said to be Mr.

Close's attorney, being heard. No such occurrence took place at the March meeting of 1877.

272 Cross-int. 4. Have you any recollection about how many votes were polled at the June meeting?

A. I have not.

Cross-int. 5. Were there not 38 votes reported, consequently would not 21 have given Mr. Close's counsel the right to vote?

A. I do not know the number of votes polled.

Redirect on behalf of complainant:

Int. 6. At the meetings of the lot owners to elect trustees on both of the occasions mentioned, one being on the 7th of March, 1877, and the other on the first Monday of June, 1877, were there over 20 lot owners present or not?

A. There were, on both occasions; the voters were carefully enumerated to ascertain that fact before going into an election.

Recross-examination by Mr. CLENDENIN:

Cross-int. 7. How is it that you can recollect the number present, and yet not the number voting?

A. I did not say so; I remember that, by the terms of the law, it required 20 to make a quorum, and they were enumerated to know whether we were warranted in going into an election or not.

DAN'L MCFARLAN.

Sworn to and subscribed before me this 5th day of August, 1878.

JOHN N. OLIVER,
Examiner in Ch'y.

SEPTEMBER 16, 1878.

DANIEL MCFARLAN, recalled at his own request, testified as follows:

In my last testimony in this case I was mistaken as to dates. Without reference to any written memorandum to guide my memory, I confounded the transactions which occurred at the meeting to elect trustees on the 7th of March, 1877, with those which took place at the meeting to elect trustees on the 4th of June of that year. On refreshing my recollection I desire this correction to be made, to wit: That it was at the meeting of the lot owners held on the 7th of March at which I presided, instead of that of the 4th of June. And the proceedings stated by me in my depo-

273 sition as having occurred on the first Monday of June, took place at the meeting to elect trustees on the 7th of March, 1877.

DAN'L MCFARLAN.

Subscribed and sworn to before me this 16th day of September, 1878.

JOHN N. OLIVER,
Examiner in Chancery.

LEWIS CLEPHANE, being duly sworn, in answer to questions by Mr. BARTLEY, deposed as follows:

Int. 1. State your residence and occupation.

A. Washington, D. C.; I am a business man; I am in general business.

Int. 2. State, if you please, whether you are a lot owner in Glenwood Cemetery; and, if so, how long you have been such lot owner.

A. I am; and have been since January, 1856.

Int. 3. State whether Glenwood Cemetery has been conducted and managed to the satisfaction of the lot owners therein; and, if not, about how long is it since the dissatisfaction of the lot owners became manifest.

A. I think the cemetery has not been conducted and managed to the satisfaction of the lot owners; I can say that I think I heard complaints in regard to it as far back as 1871 or '72, but cannot fix the date. These complaints were common and general, so far as I had any conversation with the lot owners.

Int. 4. Were you present at the meeting of the lot owners for the election of temporary trustees on the 7th of March, 1877, and also at the annual meeting for the election of trustees on the 1st Monday of June, 1877?

A. I was not present at the meeting on March 7, 1877, for the election of temporary trustees. I was present at the annual election of June, 1877, at which trustees were elected for the ensuing year, and at which meeting Dr. McFarlan presided.

Int. 5. At this annual meeting for the election of trustees in 1877, did the attorney of J. B. Close, Mr. Winfield from New Jersey, appear, and demand the right to vote at the election by proxy for Mr. Close, for numerous lots in the cemetery upon which no interments had been made?

A. At that meeting a gentleman representing himself as the attorney of Mr. Close (his name I don't remember so as to be positive of, but
274 he was from the State of New Jersey) was present and made such a request. Objection was made by myself and others on the ground that he was there as the representative of the proprietors, and that the amended charter had given them the power to elect two trustees independent of the 3 to be elected by the lot owners. He then asked permission to be heard as the representative of Mr. Close, at which very decided exceptions were taken, and finally it was put to a vote as to whether he should be heard or not. My impression is he was allowed by a vote to proceed, but not to vote. He did make a speech on that occasion, in which he stated the amended charter was of no effect and not binding in any way. I replied to him, and the meeting afterwards proceeded to the election. The witness here corrects himself, as follows: I was mistaken as to dates above; I was present at the meeting to elect trustees on the 7th of March, when the proceedings above mentioned by me took place, but was not present at the meeting to elect trustees on the 4th of June.

Cross-examination by Mr. CLENDENIN:

Cross-int. 6. You say you purchased your lot in January, 1856. How much have you been charged or paid for the cuttings of the grass 88 times, the raking of the leaves 44 times, fall and spring of each year, and the pruning of the shrubs by a professional pruner employed for that purpose, during the 22 years you have been the owner of that lot, or for any special attention to said lot?

A. No bill has ever been rendered me for such services, nor did I order any special pruner for the plants; consequently I paid nothing.

Cross-int. 7. You say this general dissatisfaction, as near as you recollect, arose about the year 1871 or 1872; was that before or after you and

a few others of our lot holders started the building of Graceland Cemetery?

A. I have no knowledge of that, as I am not connected with Graceland Cemetery, except that I purchased a lot there, and afterwards gave it away, but the title still stands in my name. I always opposed the building or establishing of a cemetery at that point.

Cross-int. 8. Your not being one of the managers, you could say whether it has been a success?

(Objected to by complainant's counsel.)

A. I have no knowledge on the subject.

LEWIS CLEPHANE.

275 Sworn to and subscribed before me this 5th day of August, 1878.

JOHN N. OLIVER,
Examiner in Chancery.

Rebutting testimony on behalf of complainant.

Testimony of John McClelland on behalf of complainant, taken at the office of T. W. Bartley, in Washington, D. C., October 9, 1878, by consent of parties.

JOHN MCCLELLAND, after being first duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says as follows:

First question by T. W. BARTLEY, of counsel for complainant. When did the fact become known to the lot owners in Glenwood Cemetery that the cemetery was under the control and management of a few persons in and about New York City, who had no interest in it except so far as they could make money out of it and speculate upon it?

(Objected to by Mr. Wilson, counsel for defendants, as leading and argumentative, and calling for mere hearsay testimony.)

A. I learned it in 1873, and it had been known to some of the lot owners before that time, as I afterwards learned.

Q. When you spoke of removals from Glenwood Cemetery to other cemeteries in your former deposition in this case, did you refer to removals before or since the lot owners became dissatisfied with the management of Glenwood Cemetery?

A. I had reference to removals since the dissatisfaction among the lot owners had become known.

Q. When were the removals made from Holmead's Cemetery and the Foundry Cemetery to Glenwood Cemetery?

A. I cannot specify the year exactly. I think that occurred about ten or fifteen years ago. There was a wholesale removal from the Foundry Cemetery to Glenwood Cemetery on account of the Foundry being abandoned as a cemetery, when all the bodies in it were removed from there by the Foundry Church. I moved my dead from Holmead in 1863 on account of it being abandoned.

276 Q. About when was Holmead Cemetery abandoned?

A. I do not know; parties had been removed from it off and on for the past twenty years.

Q. Were the large removals of the dead from these two cemeteries to Glenwood Cemetery before or after 1873?

A. They were all made before 1873.

Q. Since the lot owners in Glenwood Cemetery became dissatisfied on account of the manner in which it was controlled and managed, have the removals from that cemetery to other cemeteries exceeded the removals from other cemeteries to Glenwood—

(Objected to by Mr. Wilson, counsel for defendant, as leading and argumentative)—

or have any removals been made from other cemeteries to Glenwood Cemetery since that time, as far as you know?

(See objection above.)

A. As far as my knowledge extends there have been no removals from other cemeteries to Glenwood since that time, but there have been removals from Glenwood to other cemeteries, to my knowledge.

Q. When did you first become a lot owner, and make your first burials in Glenwood Cemetery?

(Objected to by Mr. Wilson, as a repetition of former testimony.)

A. I think that is answered in my former deposition. I bought a lot, and made my first burial in Glenwood Cemetery in August, 1863. At the same time I removed from Holmead Cemetery the remains of some of my family. That was the only removal I made from Holmead Cemetery to Glenwood, and in November, 1872, I buried my wife in Glenwood Cemetery.

Q. State whether or not your removal from Holmead Cemetery to Glenwood Cemetery was made before you ascertained that Glenwood Cemetery was under the control of the non-residents of the District of Columbia, and before the objections were made to its mode of management.

A. They were removed before I knew anything about the management of Glenwood Cemetery by northern speculators.

Q. Can you state the condition in which the trustees found Glenwood Cemetery when they took possession of it last summer?

(Objected to by Mr. Wilson as immaterial.)

277 A. We found the walks and roadways through the cemetery here and there with huge piles of earth in them, of which we hauled away some eighty-seven cart loads. The vault had to be broken open by a locksmith, to put some bodies in, for want of the key which Mr. Clendenin had possessiom of. The safe we had to have opened by a locksmith, for which we had to pay thirty-two ($32) dollars, and the books and papers had been removed, we found, when we opened it.

Q. Why did you have to employ a locksmith to open the vault and the safe?

(Objected to as immaterial by Mr. Wilson.)

A. Because Mr. Clendenin had never surrendered the keys to us.

Q. State, if you please, the condition of the vault when it was opened.

A. I do not know of my personal knowledge; I only know what the superintendent reported to me; I furnished lime to disinfect the vault.

(Objected to as immaterial by Mr. Wilson.)

Q. State in what capacity you were acting for Glenwood Cemetery under the board of trustees.

A. I am one of the board of trustees and the treasurer.

Q. After the trustees took possession of the cemetery were you over the cemetery grounds to see the condition of the roads and carriage-ways in the cemetery?

A. I was, and ordered the removal of earth and stones that was piled up in the walks from grave-digging, and removed some eighty-seven cart loads.

Q. Have you the receipts of the payments made for the removal of loose piles of dirt in the walk and carriage-ways?

A. I have.

Cross-examined by Mr. NATHANIEL WILSON, counsel for defendant:

Q. Did you mean to be understood as saying that there were no removals to Glenwood Cemetery after 1873?

A. To my knowledge there were none.

Q. What knowledge have you on the subject?

A. From seeing the new graves and the tombstones out there that I once saw in Holmead.

Q. How do you know that no bodies were removed after 1873?

A. I do not know.

Q. Have you ever examined the records to ascertain?

A. I have never examined the records at Glenwood.

278 Q. Then there may have been a great many?

A. I do not think there has been.

Q. Do you not know that there have been removals there within the last six months?

A. I do not, sir.

Q. Do you not know that there have been some removals to Glenwood Cemetery since the board of trustees, so-called, took possession?

A. I do not know, sir, whether there has or not.

Q. From what paper were you reading when your direct examination was being taken?

A. It was a list of questions prepared by Judge Bartley, showing the information he desired.

Q. Let me see it, please.

(Witness shows the paper to Mr. Wilson.)

JOHN McCLELLAND.

Subscribed and sworn to in my presence, October 10, 1878.

H. R. SULLIVAN,
Ex. in Chancery for the District Columbia.

Mrs. MARTHA MYERS, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and testifies as follows:

By T. W. BARTLEY, for complainants:

Q. Please state your name, age, residence, and occupation.

A. My name is Martha Myers; I am 52 years of age; I reside with my husband, who is here present with me now, at 440 M street NW., Washington, D. C., where I am keeping house for him.

Q. State, if you please, whether or not you or your husband now own a lot in Glenwood Cemetery; and, if so, when you became such owner of that lot.

A. We have owned a lot in Glenwood Cemetery for 21 years.

Q. State what interments have been made upon that lot, when they were made, etc.

A. On our own immediate lot there was one interment, which was a child of ours. Four or five years ago we changed lots, and bought another lot, and had the remains of the child removed to the present lot, bought last. When we purchased the last time there was a full
279 lot purchased, and father took half of it and we took half of it. The remains of our child was removed to our half of the lot. About four years ago a sister of mine died, and her remains were buried on father's part of the lot.

Q. When your sister died was the body interred immediately, or was it placed in the vault for a while?

A. It was placed in the vault for about three weeks, I think.

Q. Afterwards was the body taken out of the vault and buried in the lot? And, if so, state what occurred at the time the body was interred in the lot.

A. We went out to the cemetery—our sisters and mother and the family—to see the body buried in the lot. When we got out there the coffin was at the grave, it having been removed from the vault. I asked Mr. Clendenin to open the coffin, that we might see the corpse. He said no; that we would regret it if we did. Mother said she would risk that. Clendenin said, "By no means to have it opened." And the body was immediately put into the ground, and we came away, and there was no ceremony.

Q. How came you and your mother to request the opening of the coffin in order to see the body of your sister?

A. My mother wanted to see her, and I wanted to be satisfied that her body was there. I did not care particularly to see her, only to know whether or not her body had been taken out and removed. I had heard a great deal said about bodies being taken from other cemeteries, and also something about bodies being taken away from this cemetery, and I desired to be certain whether or not this body was there.

Q. State, if you please, Mr. Clendenin's manner and conduct in managing the cemetery as far as it fell under your observation.

A. I think he was very abrupt and cross in his manners, and I did not think he was a fit person to be there and hold the position he did.

Q. Did you attempt to ornament the graves or the lot there with shrubbery, plants, and flowers; and, if so, with what success?

A. Yes, sir; I have ornamented it with shrubbery, flowers, and plants every season with very poor success. They did not thrive because they were cut down and destroyed.

MARTHA MYERS.

J. H. McKENNEY, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and testifies as follows:

280 By Mr. BARTLEY, counsel for complainant:

Q. Please state your name, place of residence, and occupation.

A. My name is James H. McKenney; I reside in Washington; I am deputy clerk of the Supreme Court of the United States.

Q. Are you a lot owner in Glenwood Cemetery; and, if so, how long have you been interested in that cemetery?

A. In 1863, I think, I purchased a lot in connection with my father in that cemetery. The deed was made in my father's name, but I am owner

of one-half of the lot. In 1863 my brother was interred there on the part of the lot belonging to my father. A year or two afterwards, I don't remember exactly, a child of his was also interred there. In 1865 I interred a child of my own there. They remained there until 1875, I think, and then all the bodies were removed by me to a lot in Oak Hill Cemetery.

Q. State, if you please, how you came to make the removals from Glenwood Cemetery to Oak Hill Cemetery.

A. Soon after the purchase of the lot in Glenwood Cemetery—within a year, I think—I examined the charter of Glenwood Cemetery to see how the cemetery was organized. Finding that the lot owners had no interest in the management of it, and that it was in the hands of three parties, for, as I presumed, the purpose of speculation, I determined at the earliest opportunity to remove from the cemetery to some other place, and in 1875 did remove, as above stated, the cause being that it was my idea that after the parties then controlling it had sold out all the lots they would abandon it, and then it would be expensive for the lot owners to keep it up and maintain it, which could only be done by assessments upon the lot owners.

Q. Do you still retain your interest in the lot purchased, as above stated, in Glenwood Cemetery?

A. I do.

Q. Did you take an interest in the proceedings of the lot owners generally to obtain the amendment to the charter of the cemetery in 1876?

A. I did.

Q. Can you state whether Mr. Joseph B. Close, of New Jersey, and George Clendenin, defendants in this suit, took any interest in opposing or resisting the passage of the amendment to the charter of Glenwood Cemetery in Congress; and, if so, state what you know about it?

281 A. I was present at a meeting of a subcommittee of the Committee on the District of Columbia of the House of Representatives, at which meeting there was present a committee appointed by the lot owners of the Glenwood Cemetery to represent their interests before that committee. There was also present Mr. Clendenin and a gentleman who I afterwards understood was Mr. Winfield, of Jersey City, New Jersey, who stated that he represented Mr. Close as his attorney at law, and he vigorously defended Mr. Close's management of the cemetery, and resisted and opposed any amendment to the charter of Glenwood Cemetery. Mr. Clendenin also took part in the discussion, and opposed any amendment to the charter of Glenwood Cemetery.

JAS. H. McKENNEY.

Sworn to and subscribed in my presence this 11th day of October, 1878.

H. R. SULLIVAN,
Examiner in Chancery.

JOSEPH GAWLER, after first being duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and testifies as follows:

Q. Please state your name, residence, and occupation.

A. My name is Joseph Gawler; I reside in Washington, D. C., 1726 Pennsylvania ave.; I am an undertaker.

Q. State how long you have resided in this District, and been engaged in the business as an undertaker.

A. I have lived here about forty-five years altogether, and have been engaged in the business as an undertaker for twenty-eight years.

Q. State how long you have been acquainted with the Glenwood Cemetery, and the manner in which it has been managed.

A. I have been acquainted with it ever since it was dedicated. I buried in it very soon afterwards. In regard to its management, I considered it rigidly managed in opposition to the lot owners. I have heard a good many complaints by lot owners, they not being permitted to plant flowers there, and also of the exorbitant charges in other respects made by the superintendent.

Q. At about what time did these complaints of the lot owners as to the management of Glenwood Cemetery commence?

282 A. I have heard complaints from a year or two after the cemetery was opened, but I cannot specify them now. I remember distinctly of hearing complaints. I can say positively the complaints became general in 1866. Among the complaints was that of Mr. E. H. Hale, April 28, 1866. I buried his wife there, I think, and in February of 1867 I buried a Mrs. Graves there. On April 11, 1867, I removed the remains of Mrs. Hale and Mrs. Graves to Oak Hill Cemetery on account of the dissatisfaction with Mr. Clendenin. Mr. Hale requested me at the time of the funeral, I being the undertaker, not to have any earth thrown into the grave until after all the parties had gotten into their carriages and were out of hearing of the sound. I requested Mr. Clendenin, as soon as I got to the cemetery, not to have any dirt thrown into the grave, as Mr. Hale requested. He made no reply to the request, and upon the close of the services the grave-digger, who was a colored man, was about to throw in the earth, when I caught the shovel, and told him not to throw any dirt in until after the parties had gotten into their carriages. I turned to leave, when he made a second attempt to throw the dirt in. When I asked Mr. Clendenin why he did not do as I requested him his reply was that we ought to have come sooner in the evening, as it was then after six o'clock. Mr. Hale saw the proceedings, and a few days afterwards informed me that he would have his wife removed from the cemetery as soon as he could make it convenient to purchase a lot in Oak Hill Cemetery, which he did April 11, 1867. The other case is that of Mrs. John L. Cochran, whose husband was put in the vault there March 19, 1867. Mrs. Cochran owned a lot at the cemetery at that time, and had several children buried there, but on account of Mr. Clendenin not having the coffin put into the case that I sent there, and for writing the number on the head of the coffin, she had the remains removed from the vault, her children taken up from the lot, and removed to Oak Hill Cemetery, May 20, 1867. The coffin was a handsome mahogany one, and writing figures upon it as Mr. Clendenin did defaced and disfigured the handsome surface of the coffin. Besides the defacing of the coffin with the numbers, Mrs. Cochran was offended by the coffin being put into the vault without the box or case around it; and she became dissatisfied with the management of Mr. Clendenin, and hence ordered the removal to Oak Hill Cemetery.

283 Q. From what you know of Mr. Clendenin's management of the cemetery as superintendent is he, in your opinion, a suitable man to conduct a cemetery?

A. Certainly not, sir. He was rather uncouth and careless, and at the

time of funerals he did not pay proper respect to the feelings of the friends of the deceased. He used expressions at the graves at the time of funerals that were unbecoming his position at such a time.

Q. What was your observation as to the general management of the cemetery under Mr. Clendenin?

A. My observation was that nothing could be done unless the money was paid in advance, and that no appeal could be made to any one but Mr. Clendenin, as nobody knew who the board of managers or directors were. I have often been asked who were the managers of Glenwood Cemetery, when I always would state that the man at the gate was the only one I knew who was manager, referring to Mr. Clendenin.

Q. What did you learn from Mr. Clendenin as to the cemetery company doing business as an incorporated company, and as to the grounds which belonged to the cemetery?

A. I always learned from him that it was duly incorporated and dedicated for burial purposes, and that all deeds or conveyances would be necessary to be sent to New York to get the action of the president and board of managers before the transfer of the title of the lot could be made, which occupied about a month, as he told me. In one instance I could mention—the transfer deed from Mr. Hale to some person whose name I do not remember—Mr. Clendenin told me that it would be necessary to send the papers to New York to get the sanction of the president and directors to the transfer, which would occupy about a month. At the end of that time I called for and received from Mr. Clendenin a deed duly transferred, signed by the president and secretary of the company. I have always understood from Mr. Clendenin that when the thirty acres were all occupied other ground would be laid out as needed out of the sixty acres yet remaining belonging to the company.

JOSEPH GAWLER.

Sworn to and subscribed before me this 11th day of October, 1878.

H. R. SULLIVAN,
Examiner in Chancery, District of Columbia.

284 A. J. DEMING, after being first duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says as follows:

Q. Please state your name, residence, and occupation.

A. My name is Andrew J. Deming; I reside in Washington, D. C., and I am superintendent of Glenwood Cemetery. I went into possession of Glenwood Cemetery under the present administration of the new board of trustees.

Q. State, if you please, the condition of the cemetery when you took possession of it from Mr. Clendenin.

A. Well, it was in a bad condition, the majority of the avenues having huge piles of earth in them, and the gutters were more or less filled with grass, sand, and soil. We hauled between eighty and ninety cart-loads of dirt out of it the first week of my administration, which we took from the walks, carriage-ways, and avenues. The men at work there said that these piles of dirt was the excess of dirt left over from graves thrown into the walks to clear off the lots. There were also three or four piles of stone besides the piles of dirt in the carriage-ways. The key of the office

and the key of the public vault had been taken away and were not to be found. One of the hands found a key that unlocked the office door from the outside, but it would not lock the same door from the inside. The keys of the public vault and the safe were missing or gone, and the vault had to be opened by Mr. Peabody, a locksmith. The safe also was opened by the same person by breaking the lock. On opening the public vault the odor was terrible from the vault being closed so long, and it needed a thorough renovation, which we gave it. We found seventeen or eighteen dead bodies in the vault, some of them in very bad condition. The books and papers of the cemetery had all been taken away from the office, and there was nothing at all in the safe when we opened it. The seal of the corporation was not to be found; it had been taken away. The trustees demanded of Mr. Clendenin in my presence, when I went out to take possession, the keys, books, papers, etc., belonging to the cemetery. Mr. Clendenin said he had nothing to surrender, and did not deliver over either keys, books, or papers.

ANDREW J. DEMING.

Sworn to and subscribed before me this 12th day of October, 1878.

H. R. SULLIVAN,
Examiner in Chancery, District of Columbia.

285 In the supreme court of the District of Columbia, in equity.

THE GLENWOOD CEMETERY
vs.
JOSEPH B. CLOSE ET AL. } No. 5877.

S. T. G. Morsell, of the city of Washington, D. C., having been duly sworn to testify the truth, the whole truth, & nothing but the truth, in said cause, deposes & says that about the 9th of March, 1877, & for some time thereafter he acted as president of the board of trustees of Glenwood Cemetery; and that the paper hereto attached, & for identity marked (A), is an exact copy of the letter sent to Mr. Joseph B. Close by mail at Bayonne, New Jersey, about the time of the date thereof. And that the letter hereto attached, & for identity marked (C), is the original letter received in reply from Mr. Close by due course of mail.

S. T. G. MORSELL.

286 DISTRICT OF COLUMBIA:

Personally appeared before the undersigned, U. S. commissioner in and for the District of Columbia, S. T. G. Morsell, to me well known to be the person whose name is subscribed to the foregoing affidavit, and I further certify that the said affidavit was signed in my presence, and the exhibits attached thereto were marked and identified by me as appears from an inspection of said exhibits.

And I further certify that the foregoing affidavit was subscribed and sworn to before me this 20th day of December, 1878.

[SEAL.] BARTRAM ZEVELY,
U. S. Com'r D. C.

Notice to take possession and cross-examination waived.

NATH'L WILSON,
Sol. for def't Close

287 EXHIBIT A.—B. ZEVELY, *U. S. com'r, Dec. 20th, '78.*

WASHINGTON, D. C., *March 9th, '77.*

To Mr. J. B. CLOSE,

President of Glenwood Cemetery in the District of Columbia:

SIR: You are hereby notified that pursuant to the provisions of the recent act of Congress, amending the charter of said cemetery, the lot proprietors in said cemetery have duly elected the undersigned a board of trustees of the cemetery to act until the annual meeting of the proprietors of lots, on the first Monday in June next; and that if the original proprietors of the grounds in said cemetery desire to be represented in said board of trustees, they will please elect two persons to act as trustees on their behalf, to meet the undersigned at the board of trade room,
288 near the corner of Ninth street and Pennsylvania Avenue, at 10 o'clock a. m., on Thursday, the 15th day of March, 1877, and such two persons when present shall be recognized fully as members of this board in all proceedings under the said amendatory enactment.

Respectfully, &c.,

S. T. G. MORSELL.
JOHN McCLELLAND.
T. W. BARTLEY.

289 EXHIBIT C.—B. ZEVELY, *U. S. com'r, Dec. 20, '78.*

BAYONNE, N. J., *M'ch* 11, 1877.

GENTLEMEN: I am in receipt of yours under date of 9th instant conveying information of your election by lot owners as trustee of Glenwood Cemetery Company. In reply I beg leave to say that on April 7th, 1863, I became the sole and absolute owner of the property on part of which said cemetery is situate. I remained such owner until quite recently, but do not own it now. The charter which Congress has attempted to amend has never been accepted; no organization has ever been made under it to my knowledge, nor to my knowledge has it ever owned a foot of property. It is but just to myself however, to say that until recently I did believe the company was properly organized. My attorney, however, has discovered the fact that it never was and that the title
290 to all the land remained in me until my recent sale. It is just to the lot owners to say that in my recent sale I reserved all lots heretofore sold in the cemetery for the purpose of confirming the deeds heretofore given therefore. I am in a position therefore to assure you and all other lot holders that I am prepared to confirm their deeds, so as to give them a legal title, subject to such rules as may be established, which will probably be the same as heretofore existing. If you will intimate to me the manner in which you wish such lots already sold, confirmed to the purchasers, I shall be happy to have it done with the least possible trouble to them and to me. As to choosing trustees to represent myself or recognizing you as having any rights or authority in the premises, I respectfully decline.

Yours, very truly,

JOS. B. CLOSE.

To Messrs. S. T. G. MORSELL, JOHN McCLELLAND, T. W. BARTLEY.

Supreme court of the District of Columbia.

GLENWOOD CEMETERY COMPANY
vs.
JOSEPH B. CLOSE ET AL. } In equity. No. 5877.

DEPOSITIONS OF WITNESSES FOR THE DEFENCE.

Judd & Detweiler, printers.

291 Supreme court of the District of Columbia.

GLENWOOD CEMETERY COMPANY
vs.
JOSEPH B. CLOSE, WILLIAM S. HUMPHREYS, Frederick N. Close, R. S. Evans, and George Clendenin. } In equity. No. 5877. Docket.

Defendants' proof, taken by Bartram Zevely.—Filed January 3, 1879.—R. J. MEIGS, *clerk.*

Depositions of Charles W. Utermuhle, Anton Eberly, Willis Reed Speare, George Clendenin, Washington B. Williams, and Lambert Tree, witnesses produced and sworn on behalf of defendant Clendenin in the above-entitled case, before me, Bartram Zevely, an examiner in chancery, on the 27th day of September, 1878, and on succeeding days until finished, between the hours of one p. m. and 4.30 p. m., at the offices of Messrs J. Hubley Ashton and Nathaniel Wilson, 635 F street, Washington, D. C. (pursuant to notice given to said witnesses and the counsel in the case), to be used and read in evidence in support of the above-entitled case.

Formal notice to take depositions was waived. Present: Judge Thomas W. Bartley and T. Jessup Miller, counsel for complainants, and J. Hubley Ashton and Nathaniel Wilson, counsel for defendants.

Deposition of Charles W. Utermuhle.

CHARLES W. UTERMUHLE, a witness produced and sworn on behalf of the defendants in the above case, doth depose and say:

292 First interrogatory by the commissioner. State your name, age, residence, and occupation.

Answer. My name is Charles W. Utermuhle; I am 71 years of age; reside at 1206 E street NW., in the city of Washington; I have no occupation.

Second. Are you in any way related to the parties to this suit?

A. No.

Third. Have you any interest, direct or indirect, in this suit?

A. No.

Examination-in-chief by NATHANIEL WILSON, of counsel for defendants:

Q. 1. Are you a lot owner in the Glenwood Cemetery?

A. 1. Yes, sir.

Q. 2. How long have you owned a lot?

A. 2. Since 1855.

Q. 3. During the time that you have been a lot owner in the cemetery have you been in the habit of visiting the cemetery frequently?

A. 3. Yes, sir; very frequently.

Q. 4. Will you state whether the general condition of cemetery during that time has been satisfactory to you as a lot owner, and what has been the general character of its management?

(Objected to by complainant's counsel.)

A. 4. In respect of the management it always suited me, and mostly in every respect. I never could find anything that I could complain of.

Q. 5. Had you ever heard any complaint made by any lot owner as to the condition of the cemetery?

A. 5. None that I can recollect.

Q. 6. Nor as to the management of Mr. Clendenin?

A. 6. I sometime' heard persons say that Mr. Clendenin was too strict in respect to flowers, and so on.

Examination-in-chief here ended.

Cross-examination by Judge THOMAS W. BARTLEY, of counsel for complainants:

Cross-q. 1. When did you say you became a lot owner in Glenwood Cemetery?

293 Cross-a. 1. In 1855.

Cross-q. 2. How long have you been in this country?

Cross-a. 2. Since 1832.

Cross-q. 3. In 1855 could you speak the English language well enough to converse with Mr. Clendenin?

Cross-a. 3. Yes, sir; I could converse with Mr. Clendenin, and with other persons speaking that language.

Cross-q. 4. I understood you to say that you had heard lot owners complain about the management of the cemetery; in what particular did they complain?

Cross-a. 4. I did not hear anything about the management particularly; I heard some persons complain of his being very particular about the flowers. Some persons complained about another taking flowers away, and blamed Mr. Clendenin. I took a great many flowers from my own place.

Cross-q. 5. How many persons have you heard make that complaint?

Cross-a. 5. Only one lady?

Cross-q. 6. Do you undertake to say that you never heard but one person complain about the management of the cemetery?

Cross-a. 6. I have never heard anything in respect of a complaint about the management.

Cross-q. 7. Well, about anything else in regard to the cemetery?

Cross-a. 7. Nothing at all.

Examination here closed.

C. W. UTERMUHLE.

Subscribed and sworn to before me this 1st day of October, 1878.

BARTRAM ZEVELY,
Examiner in Chancery.

Deposition of Anton Eberly.

ANTON EBERLY, a witness produced for the defendants, being first cautioned to tell the truth, the whole truth, and nothing but the truth, doth depose and say:

First interrogatory by the commissioner. State your name, age, residence, and occupation.

294 Answer. Anton Eberly; am 51 years of age; present residence on Lincoln avenue, near Boundary; my place of business is 718 7th street; I am a stove-dealer and tinner.

Second. Are you in any way related to the parties to this suit?

A. No.

Third. Have you any interest, direct or indirect, in this case?

A. None, except as a lot owner in the cemetery.

Examination-in-chief by Mr. NATHANIEL WILSON, of counsel for defendants:

Q. 1. How long have you been a lot owner in Glenwood Cemetery?

A. 1. Could I have had time to look over my papers I might have been able to answer more definitely; but it has been over twenty (20) years.

Q. 2. During that time have you been in the habit of visiting the cemetery frequently?

A. 2. Yes, sir; frequently.

Q. 3. State what you know of the general condition and management of the cemetery.

A. 3. Of the condition of the cemetery I am not able to judge; but I think it is kept properly and might compare favorably with any I have seen, with the exception of Oak Hill; but I consider it in a great deal better condition than Green Mount, in Baltimore, and the Baltimore Cemetery. The roads are in good condition, and the grass is kept down; furthermore, there is no trespassing allowed there, in any shape or form. I have not been to the cemetery for the last four months, because I have been in Europe. I have not been to the cemetery since May.

Examination-in-chief here closed.

Judge Bartley, of counsel for complainants, having no questions to ask in cross-examination, the witness was dismissed.

Redirect by Mr. WILSON:

R. D. Q. 1. During that time have you ever expressed any dissatisfaction as to the management of the cemetery by Mr. Clendenin?

(Objected to by Judge Bartley.)

295 A. 1. Neither directly or indirectly. On the contrary, I have always expressed myself as being perfectly satisfied with the management. I was satisfied with it, moreover, because of Mr. Clendenin's strict impartiality in enforcing the rules of the cemetery.

Now I know Mr. Clendenin and his family very well, and visit them; yet he would not allow me to use my cigar in going through the cemetery, because it is against the rules; nor would he let me take my dog along;

I had to send home. I know from that that he would be strictly impartial. Occasionally, Mr. Clendenin has spoken very sharply to me, but I knew he was right. There was a time when only people could visit the cemetery who were lot owners, and had a ticket of admission and presented it.

I called there one Sunday with my family (two or three of them), and there were a number of persons, about a dozen, following me, whom I did not know. They seemed to be with me, and Mr. Clendenin remarked, "You have a very large family." I was not responsible for them, and, at the time, thought he was rather meddlesome, but I knew he was right. No one can insult me for any length of time if I know he is right.

ANTON EBERLY.

Subscribed and sworn to before me this 28th day of September, A. D. 1878.

BARTRAM ZEVELY,
Examiner in Chancery.

Deposition of Willis Reed Speare.

WILLIS REED SPEARE, a witness produced for the defendants, being first duly sworn, deposes and says:

First interrogatory by the commissioner. State your name, age, residence, and occupation.

Answer. My name is Willis Reed Speare; am of lawful age; reside at 940 F street; and my occupation is that of undertaker.

Second. Are you in any way related to the parties to this suit?

A. No.

Third. Have you any interest, direct or indirect, in this suit?

A. No.

296 Examination-in-chief by Mr. WILSON, of counsel for defendants:

Q. 1. How long have you been engaged in the business of undertaker in the city of Washington?

A. 1. I have been engaged in that business about ten years; I have been in the business for myself about one year.

Q. 2. During that time have you had occasion to visit Glenwood Cemetery frequently?

A. 2. Yes, sir.

Q. 3. State what has been its general condition, and the character of its management during that time.

A. 3. Always been very satisfactory to me. I never had any trouble out there.

Q. 4. What about the condition of the cemetery?

A. 4. It was always in good order and condition, and I should judge is always kept so.

Q. 5. State how its condition and management compared with the condition and management of other cemeteries in the District?

(Objected to by complainant's counsel.)

A. 5. Well, sir, the management at Oak Hill was somewhat different from that at Glenwood; but Glenwood stands second to Oak Hill as to management and the keeping the grounds in good condition.

Q. 6. In the month of January, 1876, did you have occasion to present a bill to Judge Bartley on behalf of the managers of the cemetery?

A. 6. In January, 1876, I had occasion to go to Glenwood Cemetery to order a grave for Judge Bartley's wife, and there was a bill on the lot (his lot) of $25. I took Mr. Clendenin's message to Mr. Bartley, and Mr. Bartley flew off in a very great temper; said he would not pay it; that it was an outrage; and he said a great many more things that I can't exactly remember at present; perhaps he would not have said such things if he had not just lost his wife.

Q. 7. What, if any, threat did he make against Mr. Clendenin?

A. 7. Threatened to have him put out of the place.

Examination-in-chief closed here.

297 Cross-examination by Judge THOMAS W. BARTLEY, of counsel for complainants:

Cross-q. 1. Who was present at the conversation you speak of?

Cross-a. 1. Mr. Jenner.

Cross-q. 2. Do you undertake to relate my language?

Cross-a. 2. I could not give it verbatim at present; at that time I could have done so. I know you were in a very bad condition; that is, you were excited; and you said a great many things you would not have said if your wife had not been dead.

Cross-q. 3. Was no other person present besides Mr. Jenner?

Cross-a. 3. Not at that time. I think your son came in shortly afterwards.

Cross-q. 4. Were you the undertaker I employed?

Cross-a. 4. I was foreman of the establishment from which you ordered.

Cross-q. 5. Who was the undertaker I employed?

Cross-a. 5. R. F. Harvey.

Cross-q. 6. How did you come to be there if Harvey was employed?

Cross-a. 6. Mr. Harvey was not in the city, and I was foreman of the establishment, and always attended to the business.

Cross-q. 7. Who employed you to go out there?

WITNESS. To the cemetery?

Judge BARTLEY. Yes, sir.

Cross-a. 7. You gave me your order.

Cross-q. 8. Personally?

Cross-a. 8. Yes, sir; you told me to go out there and have a grave dug for your wife. Mr. Jenner was in the room at the time.

Cross-q. 9. Where did it take place?

Cross-a. 9. This conversation took place in your library.

Cross-q. 10. At my house?

Cross-a. 10. Yes, sir.

Cross-q. 11. How did you come to come to my house?

Cross-a. 11. I was sent there. The order came for somebody to go up and take the order for your wife; I think Mr. Jenner came with the order, if I am not mistaken.

Cross-q. 12. Who paid the bill of $25 you speak of?

298 Cross-a. 12. Mr. Jenner.

Cross-q. 13. Had he paid it before this conversation you speak of having had with me?

Cross-a. 13. No, sir; we had the conversation in the evening, and in the morning he gave me his personal check for the amount.

Cross-q. 14. Are you not aware of the fact that Mr. Sherman paid that bill?

Cross-a. 14. No, sir; I am not. Mr. Sherman might have given Mr. Jenner the money, but Mr. Jenner gave me his personal check for the $25.

Cross-q. 15. Had the grave been dug before the check was given?

Cross-a. 15. No, sir. I had occasion to go back to the cemetery. Mr. Clendenin did not refuse to dig the grave, but said he would hold me responsible for the $25, and I went back and told you what he said. Mr. Jenner gave me his check the next morning.

Cross-q. 16. Did you not say that Mr. Clendenin refused to allow the interment to take place on the lot until this bill was paid?

Cross-a. 16. Yes, sir; I did say so, sir.

Cross-q. 17. Have you not just said that Mr. Clendenin did not refuse to dig the grave?

Cross-a. 17. Yes, sir; I said that Mr. Clendenin had not refused to dig the grave, providing I would be responsible for the twenty-five dollars ($25).

Cross-q. 18. In the conversation spoken of did I not make the remark that the bill presented was a fraud?

Cross-a. 18. Yes, sir.

Cross-q. 19. Did I not say, at the time, that I had told Mr. Clendenin that if he thought the bill was a just one to bring his suit on it, and we would test the question?

Cross-a. 19. Yes, sir; you made that remark.

Cross-q. 20. And that Mr. Clendenin had declined to bring the suit?

Cross-a. 20. Those are the remarks you made.

Cross-q. 21. And was not my objection and excitement, at the time, caused by the fact of an attempt to enforce a bill, in that way, which he was unwilling to have tested by the decision of a court?

Cross-a. 21. Yes, sir; I should attribute that to the cause. But,
299 Mr. Bartley, it was like this with me. I could not have done anything unless I paid the $25 without consulting you, and if I had paid it, probably you would not have paid me.

Cross-q. 22. Did I object to your presenting the bill and making the statement to me, or object to Mr. Clendenin's refusal to allow the interment to be made?

Cross-a. 22. No, sir; you did not make any complaint of me, but only of what Mr. Clendenin had done.

Cross-q. 23. Was not my objection made to Mr. Clendenin's attempt to enforce the payment of a bill at such a time as that, which he was afraid to test by bringing a suit for?

Cross-a. 23. That was your objection, sir.

Cross-q. 24. So stated by me at the time?

Cross-a. 24. Yes, sir.

Examination closed.

W. R. SPEARE.

Subscribed and sworn to before me this 1st day of October, 1878.

BARTRAM ZEVELY,
Examiner in Chancery.

Deposition of George Clendenin.

GEORGE CLENDENIN, a witness of lawful age, produced and sworn on behalf of the defendant to tell the truth, the whole truth, and nothing but the truth, deposes and says:

First interrogatory by the commissioner. State your name, age, residence, and occupation.

Answer. My name is George Clendenin; I am 66 years of age; I reside at Glenwood. Occupation that of superintendent of Glenwood Cemetery.

Second. Are you in any way related to the parties to this suit?

A. Not in any way.

Third. Have you any interest, direct or indirect, in this suit?

A. None in the least.

300 Examination-in-chief by Mr. WILSON, of counsel for the defendants:

Q. 1. When did you become superintendent of the Glenwood Cemetery?

A. 1. On the 1st day of March, 1853; that, however, was before it was a cemetery. I became superintendent of Glenwood Cemetery on the 2d day of August, 1854.

Q. 2. Where did you reside prior to March, 1853?

A. 2. In the city of New York.

Q. 3. State at whose request, and for what purpose, you come from the city of New York, in 1853.

A. 3. At the request of William S. Humphreys (now dead), and to build Glenwood Cemetery.

Q. 4. What was the condition of the cemetery property when you arrived here?

A. 4. There was no cemetery at all; there had been some little clearing of trees where the avenues were to run, and a small portion of the grading had been done. A few men were employed about the grounds; I could not tell how many were at work; there were, I think, some eight or ten; I fixed up the pay-roll myself to about 25 men. This was in the month of March.

Q. 5. Under whose direction was the property at that time?

A. 5. William S. Humphrey.

Q. 6. Who was the engineer in charge of the work?

A. 6. T. F. DeLaroche.

Q. 7. When was the work of laying out the cemetery completed?

A. 7. Not until some time after the dedication, during that coming winter; it was dedicated in the month of August, and surveyed and mapped in the months of September and October. What little finishing up there was to be done was done between that time and the first of January, 1855.

Q. 8. Were the moneys used in the preparation of the grounds disbursed by you; and, if so, state from whom they were received by you; and approximately, what sums had been expended prior to the 2d of August, 1854?

A. 8. In part, the money was disbursed by me. I disbursed myself a little over thirty thousand dollars ($30,000). In the work of con-
301 structing and preparation, there was disbursed about forty thousand dollars ($40,000). I could not divide exactly the amounts re-

ceived from each person. A part came from William S. Humphreys, and a part from Joseph B. Close. These two furnished me the whole amount.

Q. 9. Where were the cemetery grounds situated, and how were they described; that is, in a general way, with reference to any deed?

A. 9. The property was known as "Shamrock Hill," when purchased from Captain James J. Boyle, by William S. Humphreys.

Q. 10. How much did the whole tract consist of?

A. 10. The whole tract, purchased by Humphreys, consisted of ninety (90) acres, more or less.

Q. 11. How much of that tract was laid off in lots, drives, walks, &c, and how was the tract so laid off, enclosed?

A. 11. Thirty acres were laid off. The tract so laid off was enclosed by a seven (7) foot paling fence.

Q. 12. Did that fence entirely surround it and separate it from the remaining sixty acres?

A. 12. Entirely and distinctly.

Q. 13. Were the remaining sixty acres ever, in any way, laid off in lots or drives?

A. 13. No, sir.

Q. 14. On the 2d of August, 1854, what was the condition of the remaining tract of sixty acres; and for what purpose has it since been used, and what is its present condition?

A. 14. Has always been pasture land, with the exception of two or three acres, which I cultivate as a garden for home use.

Q. 15. Do you know the persons named in the act of incorporation, passed on the 27th day of July, 1854? and, if so, state where they severally reside.

A. 15. I do know them. C. B. Colvert, George Barker, William B. Todd, James C. McGuire, William A. Bradley, and Charles S. Wallack all resided in the city of Washington. They are all now dead except James C. McGuire.

Abner Mellen (erroneously named Abner Miller in the act of incorporation), William Banks, Joseph B. Close, William Phelps, and William S. Humphreys, resided in the city of New York. Humphreys is dead. Randolph S. Evans resided in Baltimore, and was alive at last advice.

302 Q. 16. What part did you take in procuring the act of incorporation?

A. 16. The first I knew of it was that a printed pamphlet was put into my hands by William S. Humphreys.

Q. 17. Did you in any way procure, or aid in procuring, the passage of the said act?

A. 17. No, sir.

Q. 18. After the passage of said act of Congress what knowledge have you of any organization thereunder by any of the persons named as incorporators in said bill?

A. 18. None whatever.

Q. 19. What control over said property, or any part of it, did any of the persons named in said bill (except Joseph B. Close and William S. Humphries) assume or exercise?

A. None to my knowledge.

Q. 20. From the time you assumed the management of said cemetery, as superintendent, until some time in the year 1857, who gave you instructions concerning the management of the cemetery?

A. 20. William S. Humphreys, exclusively.

Q. 21. Since that time under whose direction have you acted as superintendent?

A. 21. Mostly Joseph B. Close.

Q. 22. Since you were appointed superintendent has any one assumed to give directions concerning the cemetery or its management other than Humphreys or Close?

A. 22. My instructions were entirely from those two.

Q. 23. Have you any knowledge of any meeting or meetings having been held by the persons named in said act of Congress for the purpose of organizing as a company, or have you ever heard of any such meeting or meetings?

A. 23. I have no knowledge, direct or indirect.

Q. 24. Do you know, or have you ever heard of, the existence of any minutes, books, or records of the proceedings of the persons named in said act of Congress as incorporators or organizers of the company?

A. 24. No, sir.

Q. 25. Have you ever heard or known of any of the persons named in said act (except said Humphreys and Close) exercise, or claiming a right to exercise, any authority or control in the management of said cemetery?

A. 25. No, sir.

303 Q. 26. State what personal knowledge you had of the preparation of the printed pamphlets, one of which is filed as an exhibit to the bill of complaint.

A. 26. The first I knew of them was that one was sent me in December, I think, of that same year (though as to the time I will not be certain), by Humphreys, from New York.

Q. 27. By whom were the forms of deeds and certificates prepared?

A. 27. I do not know.

Q. 28. Under whose direction were the public proceedings or ceremonies that occurred on the 2d of August, 1854?

A. 28. William S. Humphreys entirely.

Q. 29. Did the said Close, Phelps, and Evans have anything to do therewith?

A. 29. They were not present here, and I could not, of course, say. They were not at the dedication, but Humphreys was.

Q. 30. They had nothing to do with it, so far as you know?

A. 30. No, sir; William S. Humphries was, to my knowledge, the only one who had anything to do in preparing for the dedication.

Q. 31. State whether there was, to your knowledge, any misrepresentation to any purchasers of lots as to the residence of the persons whose names appear in said pamphlet, as managers of said cemetery, or as to the title by which the lots were held.

A. 31. Nothing but the truth, that I know of. There was no misrepresentation made by anybody. In 99 cases out of a 100 it was thought I owned it all.

Q. 32. What interference was ever made by you in the improvements of lots by lot owners?

A. 32. None whatever, excepting as I was bound by the rules and regulations—grading and sodding of lots. All were allowed to plant and cultivate shrubs.

Q. 33. What, if any, extortions and peculations were practiced on the lot holders?

A. 33. None whatever. There was an established charge for all. All were treated alike. No distinctions were made whatever.

Q. 34. What, if any, complaints were made by the lot holders as to your conduct and management of the affairs of the cemetery prior to January, 1876?

304 A. 34. Nothing was ever said to me, excepting that several wanted to sod their own lots, and under the rules I could not allow it.

Q. 35. Did it ever happen that ornamental flowers and shrubs planted on the graves of the dead were cut down because you and your assistants were not paid for taking care of them?

A. 35. We only take care of what we call summer plants. The bill is never presented until December, and the plant then must be taken up by the lot holder or is frozen down, and cannot be cut down. There never has been one cut down; no one owes a bill, save one of the trustees, for the care of his summer flowers.

Q. 36. During the time you were superintendent, in how many instances did lot owners abandon their lots and remove the remains of their friends to other cemeteries?

A. 36. I could not name the exact number that abandoned their lots in Glenwood for other cemeteries, but ten (10) times the number have abandoned their lots in other cemeteries for Glenwood as have abandoned their lots in Glenwood for other cemeteries; among the former were three of the trustees.

Q. 37. What has been the condition of the cemetery during your management of it as superintendent?

A. 37. The lot owners perhaps should answer that, as my answer might be considered egotistical; but I will say that my own opinion has been that of a great majority of the lot holders—that the cemetery was better kept and managed than any in the District of Columbia, except Oak Hill.

Q. 38. What, if any, complaints of a serious nature have ever been made to you concerning your management of the cemetery?

A. 38. None whatever, except that I enforced the rules and made them pay their debts.

Q. 39. Can you state, approximately, how many lots have been sold?

A. 39. A little over one-half; there are about twenty-six hundred (2,600) lots in the cemetery, and a little over thirteen hundred have been sold, and they being subdivided would make about twenty-three hundred (2,300) lot holders in it.

305 Q. 40. State what disposition has been made of the proceeds of the sales of the lots and of the other income derived from the cemetery.

A. 40. The proceeds were used in improving and taking care of the grounds. I received about $160,000; ninety thousand dollars have been expended in the preparation and improvement of the grounds, and seventy thousand dollars have been returned to the owners.

Q. 41. During the time that you have been superintendent of the cemetery what have been the gross receipts from it?

A. 41. One hundred and sixty thousand dollars.

Q. 42. Prior to January, 1876, did any one, to your knowledge, ever claim that the lot owners, or any of them, had any right or title in or to the lots unsold or in or to the sixty acres outside of the cemetery inclosure?

(Question objected to by complainants' counsel.)

A. 42. No one ever spoke to me about such a thing, nor did any one ever tell me any one else spoke to them about any such right.

Q. 43. How was your compensation paid, as superintendent, and did you have any contingent interest in the receipts from the cemetery?

A. 43. My compensation, which was fixed at one hundred dollars ($100) per month, was paid out of the receipts and put on the balance sheet, provided the receipts justified it, and the remainder was given to the owners.

Q. 44. Were you present at the first meeting, under the amended act of Congress of March, 1877?

A. 44. I was.

Q. 45. State what occurred?

A. 45. It was called for the purpose of electing temporary trustees. I introduced Mr. Close's counsel, of New York, Charles H. Winfield, who asked to be heard, and stated he would like to vote on lots occupied with the remains that had been placed in the mausoleum and unreclaimed, and under the amended law each one of those lots was entitled to a vote. They put it to a vote. Twenty-two decided for him to be heard, and thirty-one decided he could not be heard. He was further told, by a man at my elbow, that there was time enough for him to speak when called upon.

Examination-in-chief closed, 4.20 p. m.

306 Adjourned to Monday, September 30th, 1878, at one o'clock.

Witness having read over his testimony desires to correct it, as follows:

To his answer to interrogatory 37, witness made the following addition: "That the charges at Oak Hill are nearly five times as high as they are at Glenwood."

The following addition to his answer to interrogatory 45, and last, was also made:

Referring to the meeting for the purpose of electing temporary trustee', witness adds: "That Lewis Clephane raised the objection, that to allow him (Mr. Close's counsel) to vote, Mr. Close might be enabled to elect his own trustees."

To his answer to interrogatory 36, the witness made the following addition: "Among the names mentioned by John McClelland as removed from Glenwood to Oak Hill are quite a number placed in the mausoleum, an accomodation denied them in Oak Hill, as their rules prohibit them lying in the vault longer than three (3) days. I have every reason to believe that Mr. McClelland was acquainted with the circumstances at the time of making the statement."

Witness added to his answer to interrogatory 36 (by way of explanation of who the trustees were), "three of the present trustees elected under the amended charter were among the persons who abandoned their lots in other cemeteries for Glenwood."

Question by Judge Thos. Bartley: Name those trustees.

Ans. John McClelland, George W. Cochran, and George T. Keene.

The above corrections and additions were duly made in presence of counsel, this 30th day of September, 1878.

SEPTEMBER 30, 1878.

Met pursuant to adjournment. Present: Judge Thomas W. Bartley, of counsel for complainants; J. Hubly Ashton and Nathaniel Wilson, counsel for defendants; and witness, George Clendenin.

307 Cross-examination of George Clendenin by Judge BARTLEY:

Cross-q. 1. What relation are you to William S.Humphreys?

Cross-a. 1. I married his sister.

Cross-q. 2. For what purpose did William S. Humphreys purchase this tract of land from Junius J. Boyle?

Cross-a. 2. That I could not say; he never told me.

Cross-q. 3. How long after he purchased it did you take charge of it?

Cross-a. 3. He purchased it on the second of April, 1852. I think I took charge of it on the first of March, 1853. I think that is the date of the deed.

Cross-q. 4. Who was in possession of it when you took charge of it?

Cross-a. 4. An old gentleman by the name of Perry, who was a kind of superintendent.

Cross-q. 5. For whom?

Cross-a. 5. For Mr. Humphreys, I judge. He discharged him, so I presume he engaged him.

Cross-q. 6. Who employed you?

Cross-a. 6. William S. Humphreys.

Cross-q. 7. How long did William S. Humphreys continue in possession and control of this tract of land?

Cross-a. 7. That I have to give from memory. I think somewhere until about 1857; it might have been a little later that he relinquished possession.

Cross-q. 8. Was the tract of land timbered, or was it an improved tract of land?

Cross-a. 8. Just about the same as it is to-day, part timbered and part improved; no division in the land. The timber may be thinned out to some extent; and yet I presume it is nearly always about the same. The young timber comes up as the old goes down, but the limits of the timber are just about the same.

Cross-q. 9. Did you sell timber, or did Mr. Humphreys sell timber, off this land for some years?

Cross-a. 9. I never did, and I do not think he did; he was not able to cut timber.

Cross-q. 10. Was timber taken from this tract of land after you came here and sold.

308 Cross-a. 10. It was taken, and never paid for to this day.

Cross-q. 11. Was it bargained away?

Cross-a. 11. No, sir; taken with a high hand, twelve years after I took possession of it.

Cross-q. 12. Who was in possession and control of this land at the time of the dedication, in 1854?

Cross-a. 12. William S. Humphreys possessed the land, and I managed it.

Cross-q. 13. Who made the arrangements and procured the dedication to be made?

Cross-a. 13. I fancy Mr. Humphreys, as he ordered me to procure the carriages; he never told me about it.

Cross-q. 14. He ordered you to procure the carriages?

Cross-a. 14. Yes, sir; it is only a fancy of mine about his arrangements.

Cross-q. 15. Who had the notices of the dedication published in the newspapers at the time?

Cross-a. 15. That I could not tell you. I paid for them; that is all I know about it.

Cross-q. 16. Were you present at the time of the dedication—on the grounds?

Cross-a. 16. Yes, sir; I was somewhere in the cemetery.

Cross-q. 17. About how many people were there?

Cross-a. 17. About a couple of hundred; might have been more or less.

Cross-q. 18. How long after the dedication was made was it that you received the printed pamphlet giving the ceremonies of the dedication and the rules and regulations under which the cemetery was to be conducted?

Cross-a. 18. Not having my dates, I could not say.

Cross-q. 19. Give it as near as you can.

Cross-a. 19. I think it was in December of the same year.

Cross-q. 20. Who sold the lots in the cemetery; you or Wm. S. Humphreys?

Cross-a. 20. I did.

Cross-q. 21. Did you give the purchasers of lots a copy of this pamphlet when you sold them lots?

Cross-a. 21. Most invariably; gave one to Judge Bartley.

Cross-q. 22. Who directed you to deliver these pamphlets to the purchasers?

309 Cross-a. 22. No person.

Cross-q. 23. Under whose authority were you acting at the time?

Cross-a. 23. Same person, William S. Humphrey.

Cross-q. 24. For what purpose did William S. Humphreys furnish you with these pamphlets?

Cross-a. 24. To give each lot holder to understand what the rules and conditions of the cemetery were.

Cross-q. 25. When was it that Mr. Close came in and took charge of the cemetery instead of William S. Humphreys?

Cross-a. 25. I do not know, but I think it was about the time I named before, 1857.

Cross-q. 26. Did you make any change in the mode of selling the lots and delivering these pamphlets to purchasers, or in the general management of the cemetery, from that which had been pursued by William S. Humphreys?

Cross-a. 26. None whatever.

Cross-q. 27. Did you take part and assist Mr. Humphreys at the time of the dedication?

Cross-a. 27. I made myself useful, if you call that helping.

Cross-q. 28. Were you called upon by the tax assessors of the District of Columbia for the assessment of these grounds for taxation; and, if so, when were you first called on?

Cross-a. 28. I have no recollection of anything more than what Mr. Carpenter said. Mr. Carpenter said he called upon me, but I have no recollection.

Cross-q. 29. Did you go to the tax assessor's or tax collector's office, at any time, on the subject of the assessment of these grounds for taxation?

Cross-a. 29. I did, when Mr. Cook sent me a bill.

Cross-q. 30. Did you represent to the tax assessor or collector that the entire 90 acres of that whole tract constituted the cemetery, and was dedicated to that purpose?

(Objected to as immaterial and incompetent, by Mr. Wilson, defendants' counsel.)

Cross-a. 30. Yes, sir; if putting that pamphlet in his hands represented it.

Cross-q. 31. Did you not state, in writing, to the collec-
310 tor that the entire tract of land constituted the cemetery, and was dedicated to that purpose?

Cross-a. 31. No, sir.

Cross-q. 32. Did you state to lot purchasers, at the time of the purchase, that the entire tract of land had been dedicated to the purposes of a cemetery, and that the balance over and above the thirty acres laid out in lots would be laid out when it was required for that purpose or use?

Cross-a. 32. I might, and I might not have so stated.

Cross-q. 33. Did you not state, in some form, verbally or in writing, to the tax assessor or collector, that the entire tract of land was dedicated to the purposes of a cemetery, and therefor' was by law exempt from taxation?

Cross-a. 33. I probably have said that to the collector, but never to the assessors, for I never saw them to my recollection, that is not in their capacity as assessors; I know them all well, but never said anything like that to any of them.

Cross-q. 34. Will you please state whether you did or did not represent to the tax collector that the entire tract of land had been dedicated to the purposes of a cemetery, and was therefore exempt from taxation?

Cross-a. 34. I can only say I think it likely I did. I would not say I did, nor that I did not. I think it likely I did.

Cross-q. 35. Has any portion of this land been taxed since you went on to it, or has a tax been paid for any portion of it since the dedication, up until this time?

Cross-a. 35. I think I paid one or two little bills which the collector told me afterwards were for Boyle's negroes (you know a tax was paid at that time on negroes).

Cross-q. 36. (Judge BARTLEY.) Please read the question again to the witness, and ask for a full answer?

(Commissioner did as requested.)

Cross-a. 36. (Mr. Clendenin answered:) I told you above that I had paid one or two little bills, and I think the collector told me afterwards that Boyle's negroes were included in it. The bills were very small, were nominal amounts, of about three dollars, never over ten dollars.

Cross-q. 37. Do you not know that this land, including the entire tract, has been exempt from taxation in the District of Columbia, and no tax paid on the land?

Cross-a. 37. I do not.

311 Cross-q. 38. Do you undertake to say that you do not know that this land has been wholly exempt from taxation, on the ground of its dedication to a cemetery?

Cross-a. 38. I do.

Cross-q. 39. What tax have you paid on this land, as land tax, since 1854?

Cross-a. 39. I could not tell you exactly; I think there were some three or four or little bills which I paid for land only, I think, though I never paid them. I told them I would give them so much work on the road, or something of that kind; the last bill was about 1860; must have been about that time, for that was the time I fixed the road for the levy court.

Cross-q. 40. If you have ever paid any land tax on this ninety acres of ground, when did you pay it, what amount did you pay, and how often did you pay it?

Cross-a. 40. I told you I could not tell whether it was land tax or what it was; I paid little bills, from three (3) dollars to ten (10) dollars; Mr. Ray was the collector. They were small bills, whatever they were, and there were four of them; I think about four.

Cross-q. 41. (Judge BARTLEY.) Please read the question over to the witness, and ask for a full answer.

(Commissioner did as requested.)

Cross-a. 41. (Mr. Clendenin answered:) I can't tell you the dates nor the amounts, but they were between three and ten dollars; I think the last one I paid was for that amount, that is, ten dollars, as near as my memory serves me.

Cross-q. 42. Do you intend to give the impression that this land has been regularly taxed and the tax paid on it annually, or not?

Cross-a. 42. I do not.

Cross-q. 43. Do you not know the fact that this entire tract of land has been held exempt from taxation, on the ground of its dedication to a cemetery?

Cross-a. 43. I do not; otherwise those bills would not have been presented to me.

Cross-q. 44. What amount of taxes do you mean these bills cover for the last 25 years?

Cross-a. 44. I could not tell you.

Cross-q. 45. What amount of taxes, if any, have you paid on the land?

312 Cross-a. 45. Only what I have named before. I couldn't tell you how many bills I paid, nor what they aggregated.

Cross-q. 46. In the last 24 years have you paid on this land as taxes any amount whatever; and, if any, state as near as you can what amount?

Cross-a. 46. All that I have paid I have paid in the last 24 years. I did not pay any the first year, although I presume what I paid in 1854 was for 1853.

Cross-q. 47. (Judge BARTLEY.) Please read the question again to the witness, and ask for a full answer.

(Commissioner did as requested.)

Cross-a. 47. (Mr. CLENDENIN answered:) I could not tell you what were the amounts, whether for land or not, nor could I tell you [how] often I have paid the bills or anything of that kind.

Cross-q. 48. That is not an answer to my question; please answer my question.

Cross-a. 48. I cannot name the amounts; all I have paid I have paid in the last twenty-four years. I cannot tell you how often I have paid them.

Cross-q. 49. Can you state whether your taxes paid have amounted to over ten dollars, or over one hundred dollars, or have been less than five hundred dollars. Give an approximate estimate of some kind.

Cross-a. 49. I can; they have amounted to more than ten dollars. I do not think they have been over one hundred dollars; I would not like to say positively, but that is my answer, to the best of my impression.

Cross-q. 50. How much over ten dollars have you paid as land tax on these cemetery grounds?

Cross-a. 50. I do not pretend to say that it is land tax at all; the bills were rendered annually by the collector.

(At the request of Judge Bartley the question was read again to witness and a full answer requested, but witness said he had no fuller answer to give.)

Cross-q. 51. Did I understand you then to say that you don't know that you have ever paid any land tax on this tract of land whatsoever?

Cross-a. 51. I paid the bill, whatever it was, to the county tax collector.

313 Cross-q. 52. How often have you been to the tax collector's office, in the District of Columbia, to see about the taxes on this tract of land?

Cross-a. 52. Only once, when he sent me a bill.

Cross-q. 53. Have you got that bill, which you say you paid as tax on this land?

Cross-a. 53. I have not. They are all sent monthly, as vouchers, with my balance sheet.

Cross-q. 54. To whom?

Cross-a. 54. To Joseph B. Close or William S. Humphreys, one or the other; Mr. Humphreys up to a certain time and Mr. Close since that time.

Cross-q. 55. In how many years have you paid taxes on these lands or any part of them?

Cross-a. 55. I think I stopped in 1860 or '61; it might have been 1862; I don't know exactly; it was about the time that Ray stopped as collector and was superseded.

Cross-q. 56. Do you undertake to say that you paid taxes on these lands annually from 1854 to 1860?

Cross-a. 56. I paid them whenever the bills were presented. I suppose, however, that they would not present a bill but once a year.

Cross-q. 57. Please answer direct, whether you paid an annual tax on any part of these lands, or not, at any time?

Cross-a. 57 You will have to give me the answer, and I will give it to you. I paid several small bills as they were presented. If I paid two in one year it was no more than I was called upon to pay.

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Cross-q. 57. Please answer direct, whether you paid an annual tax on any part of these lands, or not, at any time?

Cross-a. 57 You will have to give me the answer, and I will give it to you. I paid several small bills as they were presented. If I paid two in one year it was no more than I was called upon to pay.

Cross-q. 58. Was there a bill presented to you annually from 1854 to 1860, as a tax upon these lands; and if so, who presented it?

Cross-a. 58. I fancy there was, and the presenter was Alfred Ray.

Cross-q. 59. Have you not, in making sales of lots in the cemetery, represented to lot purchasers, either before or after their purchase, that the cemetery grounds included this whole tract of land?

Cross-a. 59. I think it likely I have; I won't say I have, and I won't say I have not.

Cross-q. 60. Have you represented to lot purchasers that the balance of this tract of land, over and above the thirty (30) acres, would be laid out into lots when the requirements of the cemetery made it necessary?

Cross-a. 60. I think it likely I have.

314 Cross-q. 61. Was it your duty, as superintendent of the cemetery, to protect the cemetery, its lots and grounds, from trespassers?

Cross-a. 61. It was. Some of them think so, I guess.

Cross-q. 62. Was that a part of the duty which was enjoined upon you as superintendent of the grounds?

Cross-a. 62. I judge it was. I have never been instructed to that effect.

Cross-q. 63 You have stated in your examination-in-chief that the sixty (60) acres, or part not laid out into lots, had been used for pasture, and a small spot for cultivation in a garden. Who used that ground for pasture and a garden?

Cross-a. 63. Various persons; I couldn't give you their names without I had a schedule of them. There is one man who has his horse on it now, but I can't even give you his name.

Cross-q. 64. Did you not use the ground for pasture, and the garden lot yourself for your own purposes, while acting as superintendent of the cemetery?

Cross-a. 64. The garden is for myself, and the pasture goes into the balance sheet as so much cash received and accounted for.

Cross-q. 65. I understand you to say that you did not use this ground as pasture for your own horses; am I correct?

Cross-a. 65. Yes, sir; correct, sir.

Cross-q. 66. You did not pasture your own horses on it?

Cross-a. 66. Yes, sir; I did. And cows likewise.

Cross-q. 67. Besides pasturing your own horses and your own cows on this land not laid out into lots, you rented out the pasture to other persons for profit, if I understand you?

Cross-a. 67. Correct, sir.

Cross-q. 68. And you put the profit received from the pasture put out to others into your balance sheet in your settlement with the proprietors of the cemetery, Mr. Close and Mr. Humphreys?

Cross-a. 68. Correct, sir.

Cross-q. 69. Was there any attempt to use this part of the ground, not laid out into lots, for any other purpose than that for which you have described?

Cross-a. 69. Not that I am aware of.

315 Cross-q. 70. Did you not have your house and your residence on this part of the ground not laid out into lots?

Cross-a. 70. I did. I lived there, and I have lived there all the time I have been in the District.

Cross-q. 71. Have you paid any rent for it to the proprietors?

Cross-a. 71. Not a dollar.

Cross-q. 72. When were the books, papers, and seal of the cemetery corporation removed from the office of the company?

(Objected to by Mr. Wilson as not pertinent to the issues raised by the bill and answer.)

Cross-a. 72. I could not answer.

Cross-q. 73. You say you cannot answer?

Cross-a. 73. That is correct.

Cross-q. 74. Do you mean that you decline to answer, or that you are unable to say when these things were removed from the office of the company?

Cross-a. 74. I do not mean that I decline to answer. I mean that I am unable to say when they were removed from the office of the company.

Cross-q. 75. Do you know who removed them?

Cross-a. 75. No, sir; if I did I could tell where they were removed.

Cross-q. 76. Do you know where they are?

Cross-a. 76. I do not.

Cross-q. 77. Who had charge, as superintendent, of the office and grounds at the time these books, papers, &c., were removed?

(Objected to by Mr. Wilson.)

Cross-a. 77. Not knowing when they were removed I couldn't tell who was superintendent.

Cross-q. 78. Were you not superintendent until the time that the present trustees took possession under the order of the court?

Cross-a. 78. By advice of counsel I have nothing more to say on the subject.

Cross-q. 79. How much ground did the property known as "Shamrock Hill," of which you have spoken in your examination-in-chief, include; that is, how many acres?

Cross-a. 79. Ninety (90) acres, more or less.

Cross-examination here closed.

316 Redirect examination by Mr. NATHANIEL WILSON:

R. D. Q. 1. What, if any, moneys were ever received by you for the purposes of the cemetery from Mr. Phelps, or Mr. Evans, or any of the other persons named in the first section of the charter, except Humphreys and Close?

A. 1. None, whatever. Not a dollar.

R. D. Q. 2. What, if any, instructions or directions did you receive at any time, in writing or orally, from Mr. Phelps, Mr. Evans, or any other of the persons named in the first section of the charter, except Humphreys and Close, in regard to the money of the cemetery, on the disbursement or the expenditure of any moneys for the cemetery, or in regard to any other subject connected with the cemetery business, or the management thereof?

A. 2. None, whatever.

R. D. Q. 3. Did you ever know of, or see, any minutes, book, or records of the four last-named persons in section one of the charter, as the managers, or board of managers, of Glenwood Cemetery?

A. 3. None, whatever.

R. D. Q. 4. Did you ever know of, or hear of, any meeting of Close, Humphreys, Phelps, or Evans, as managers, or board of managers, of Glenwood Cemetery?

A. 4. None, whatever.

R. D. Q. 5. Did any of the persons named as incorporators, except Hump'reys and Close, ever bury in the ground or own lots in the cemetery?

A. 5. Only one, William A. Bradley, has a lot there, bought for him, after he died, by his widow.

R. D. Q. 6. Did you ever here of, or know of, any stock having been issued in respect of the corporation, or by or on behalf of the corporation?

A. 6. None, whatever.

R. D. Q. 7. When was the mausoleum completed, and what was its cost?

A. 7. It was completed a few days after the dedication; it was all done, except the doors, before the dedication. There was some little delay in getting the doors from New York. The cost was ten thousand ($10,000) dollars.

Redirect examination here closed.

317 Recross-examination by Judge T. W. BARTLEY:

Recross-q. 1. How long after you came here to Washington, to to the cemetery grounds, in 1853, did W. S. Humphreys continue to give personal attention to the grounds?

A. 1. No time at all. He was backwards and forwards, to and from New York, about every week. He did not stay here a day at a time.

Recross-q. 2. For how many years?

A. 2. Probably until 1855, or about two years.

Recross-q. 3. Neither Humphreys nor Close, nor any of the other men whose names appear as managers in the pamphlet you have spoken of above, then as I understand you, used the cemetery for burial purposes themselves, at all?

A. 3. None, whatever; only one of the incorporators was buried there. William A. Bradley, and he was not a manager. His lot was purchased by his representatives after his death.

Adjourned until Friday, October 4th, at one o'clock.

GEORGE CLENDENIN.

Subscribed and sworn to before me this 8th day of October, A. D. 1878.

BARTRAM ZEVELY,
Examiner in Chancery.

FRIDAY, *October 4th*, 1878.

Met pursuant to adjournment. Present, Judge Thomas W. Bartley, of counsel for complainants, Nathaniel Wilson, of counsel for defendants, and W. B. Williams, witness.

Deposition of Washington B. Williams.

WASHINGTON B. WILLIAMS, a witness being produced for the defense,

sworn to tell the truth, the whole truth, and nothing but the truth, deposed and said:

By the commissioner. State your name, age, residence, and occupation.

Answer. My name is Washington B. Williams, am 46 years of age; I reside at 730 6th street N. W.; am a furniture dealer.

Second. Are you in any way related to the parties to this suit?

318 A. No, sir.

Third. Have you any interest, direct or indirect, in this suit?

A. No, sir; except as a lot owner.

Examination-in-chief by Mr. WILSON:

Q. 1. How long have you been a lot holder in Glenwood Cemetery?

A. 1. I have owned a part of a lot there with my father, since 1864, probably a little before that, somewhere between 1863 and 1864.

Q. 2. How long have you been in business in the city of Washington?

A. 2. I have been in business in this city, at the corner of 7th and D streets, for 23 years.

Q. 3. During the time that you have been a lot owner in Glenwood Cemetery, have you been in the habit of visiting the cemetery frequently?

A. 3. Yes, sir.

Q. 4. How frequently?

A. 4. Well, I used to drive out there nearly every Sunday, sir.

Q. 5. State what has been the general condition of the cemetery grounds during the time that you have been a lot owner.

A. 5. As far as my own observation goes, I have never noticed anything wrong. Its condition has been good, the roads good, and the lawns always kept in good condition.

Q. 6. Has the management of Mr. Clendenin been satisfactory, so far as you know?

(Objected to by Judge Bartley.)

A. 6. Perfectly to myself, sir; in every particular.

Q. 7. Have you ever heard any complaint, of a serious character, made by any of the lot owners in Glenwood Cemetery?

A. 7. No, sir; I never have.

Q. 8. Has the management of Mr. Clendenin been generally satisfactory?

A. 8. As far as I know it has.

Examination-in-chief here closed.

319 Cross-examination by THOMAS W. BARTLEY, of counsel for complainant:

Cross-q. 1. You say that you drove out to the cemetery every Sunday, at one time. What do you mean by that?

Cross-a. 1. By that I mean I used to go there every Sunday afternoon. I used to drive out there to go to my lot. That was not only for weeks, but for years, you might say.

Cross-q. 2. In what year, and how many years, did you drive out to this cemetery every Sunday?

Cross-a. 2. I don't say every Sunday; you used those words. I said nearly every Sunday.

Cross-q. 3. Well, will you state for how many years you went out there nearly every Sunday, and how often do you mean by nearly every Sunday. How many times a year did you drive out there? Did you,

at the time of driving out there, drive through the cemetery or only past it?

Cross-a. 3. I went there at the time of my brother's death; that was the first grave made in the lot; that was in 1864, or a little before that. For the last two or three years I have not been going out so often.

Cross-q. 4. How many times a year did you drive out there?

Cross-a. 4. I suppose not less than twenty-five or thirty times; more, if anything.

Cross-q. 5. Did you drive through the cemetery every time you went out there and examine the condition of the cemetery?

Cross-a. 5. No, sir; I did not.

Cross-q. 6. Did you see Mr. Clendenin, and talk with him, every time you drove out there?

Cross-a. 6. No, sir; I did not.

Cross-q. 7. How many times a year did you drive through the cemetery and examine the condition of it?

Cross-a. 7. No, sir; I never went there to make a special examination at any time. I wasn't on that committee.

Cross-q. 8. Do you say that you never have heard any complaints about the manner in which the cemetery was conducted by any of the lot owners?

Cross-a. 8. Only those that would like to have gotten their dead buried for nothing, grass cut for nothing, cemetery attended for nothing. From that class of people I have heard complaints.

320 Cross-q. 9. Who did you hear complain; who wanted those things done for nothing?

Cross-a. 9. I don't remember any names particularly.

Cross-q. 10. Do you undertake to say that it was not the duty of Mr. Clendenin, as superintendent in charge of the cemetery, to do those things which you say people wanted done for nothing?

Cross-a. 10. I have never understood it so.

Cross-q. 11. Who buried the dead is not my question. You said you had never heard complaints, except from those who wanted Mr. Clendenin to cut the grass and do certain other things without compensation. Do you undertake to say that it was not Mr. Clendenin's duty to keep the cemetery in good order, and, as superintendent, to keep down the grass, and do all other things necessary for the keeping of the cemetery in proper condition?

Cross-a. 11. I say, as far as my judgment goes of Glenwood Cemetery and Mr. Clendenin's attention to it as superintendent, was kept in as good order as any that ever came before my knowledge.

Cross-q. 12. Was it not his duty to do that without special charge?

Cross-a. 12. I didn't say, nor do I pretend to say, that he did charge for it. You asked if I ever heard any one complain, and I say there are always a lot of chronic growlers who are always complaining.

Cross-q. 13. Who do you call chronic growlers about the cemetery? Don't use such language as that without being able to name the parties?

Cross-a. 13. I don't intend to name them. I didn't pretend to take any notes of the persons or what they said. I would perhaps listen to what they said, and then pass on.

Cross-q. 14. You speak of chronic growlers in regard to this cemetery. Will you please to name who you call chronic growlers?

Cross-a. 14. I can't remember any particular name. I don't take dates and names of the little things that are said.

Cross-q. 15. Why do you make charges of their being chronic growlers, when you can't name the persons that you have heard speak of the cemetery, and whom you call chronic growlers?

321 Cross-a. 15. Well, sir; I have been in the cemetery, and persons would come in and offer suggestions as to why Mr. Clendenin don't do this and don't do that. I didn't take any note of it. I never made any complaint, and I don't think there is any ground for it. There are some growlers under the new law that is working now; I will find plenty of them. I might say that my grass is in a worse condition this summer than it ever was. You may term that growling, if you choose to take it so.

Cross-q. 16. I understand, then, that you are not able to name anybody that you have heard complain of this cemetery?

Cross-a. 16. Yes, sir; I say that.

Cross-q. 17. Have you attended any of the meetings of the lot holders which have been held?

Cross-a. 17. No, sir; I never did; because we have a board of managers, and I always thought they were managing that thing.

Cross-q. 18. Where did that board of managers live, and where did they hold their meetings?

Cross-a. 18. I don't know, sir; I don't pretend to know where they live. I was satisfied under the old law, the constitution, and the by-laws; that is, my own feeling, so I had no right to attend such meeting of seceders.

Cross-q. 19. How many lot owners have you conversed with as to the manner in which this cemetery was conducted since 1873?

Cross-a. 19. I cannot say how many; I know a great many, and have conversed with a great many; I knew many of those who are buried there, and as many of the present lot holders as any one man of the cemetery, and yet I couldn't say how many I conversed with on the subject.

Cross-q. 20. I repeat the question. How many lot owners have you conversed with as to the manner in which the cemetery was conducted since 1872?

Cross-a. 20. I have not had any general conversation with any lot holders since 1872, because I never had any cause for conversation with any one.

Cross-q. 21. If, since 1872, you have not conversed with any of the lot owners as to the manner in which the cemetery was conducted, how do you undertake to say that the cemetery was managed to the satisfaction of the lot owners?

322 Cross-a. 21. I said to my own satisfaction; I don't pretend to speak for others. I only said it was managed entirely to my satisfaction; I have no right to speak for other people.

Examination here closed.

WASH. B. WILLIAMS.

Adjourned until Tuesday, October 8th, at 1 o'clock.

Subscribed and sworn to before me this 4th day of October, 1878.

BARTRAM ZEVELY,
Examiner in Chancery.

TUESDAY, *October* 8, 1878.

Met pursuant to adjournment. Present, Judge Thomas W. Bartley, of counsel for complainants, J. Hubley Ashton and Nathaniel Wilson, of counsel for defendants, and witness Lambert Tree, esq.

Deposition of Lambert Tree, esq.

LAMBERT TREE, Esq., a witness produced and sworn on behalf of the defendant, deposed and said:

First interrogatory by the commissioner. Please state your name, age, residence, and occupation.

Answer. My name is Lambert Tree; am within a few days of 79 years of age; I reside in Washington City; and by occupation the chief clerk of the city post-office.

Second. Are you in any way related to the parties to this suit?

A. Not at all.

Third. Have you any interest, direct or indirect, in this suit?

A. I have not.

Examination-in-chief by J. HUBLEY ASHTON, Esq., of counsel for defendant:

Q. 1. How long have you resided in Washington?

A. 1. Nearly 58 years; I came here in 1820.

Q. 2. You know Mr. Clendenin?

A. 2. I know him, and have known him ever since I have owned a lot in Glenwood Cemetery.

323 Q. 3. How long have you owned a lot in Glenwood Cemetery?

A. 3. I think about 24 years; I cannot tell exactly, and I do not know whether I have any papers to show that fact.

Q. 4. Have you come in contact with Mr. Clendenin as superintendent of the cemetery?

A. 4. I have on two occasions. I buried my wife and mother and sister there. The last two were removed from Holmead's.

Q. 5. You have, then, visited the cemetery, I suppose?

A. 5. Occasionally.

Q. 6. And have seen Mr. Clendenin frequently in relation to your interest in the cemetery?

A. 6. Yes, sir; but I don't know whether I ever had any conversation with him, because there was no necessity for it, as everything was conducted to my satisfaction, and seemed satisfactory to my family. Flowers were planted around the lot and on my mother's grave.

Q. 7. Have you ever had any occasion to make any complaint against Mr. Clendenin in relation to the cemetery?

(Objected to by Judge Bartley.)

A. 7. I have not. I used to go out there nearly every Sunday. Mr. Clendenin always treated me with great courtesy and politeness.

Q. 8. Have you ever had any trouble with him in regard to the lot?

A. 8. None at all.

Q. 9. In fact, as I understand you to say, the work has been conducted to your satisfaction?

A. 9. It was; I was fully satisfied with all I saw there.

Q. 10. Are you then satisfied yourself to rest there?

A. 10. I am.

Examination-in-chief here closed.

Cross-examination by Judge T. W. BARTLEY, of counsel for complainants:

Cross-q. 1. Have you circulated with the lot owners of Glenwood Cemetery about Washington, generally?

Cross-a. 1. No, sir; I have been appealed to, though, to sign petitions, but I declined, because I was always treated well by Mr. Clendenin; and, indeed, I did not know the merits of the case.

324 Cross-q. 2. Have you circulated among the lot owners of Glenwood Cemetery about Washington, generally?

Cross-a. 2. I have not; several petitions have been presented to me to sign, but I refused.

Cross-q. 3. My question was whether you were acquainted with the lot owners generally?

Cross-a. 3. No, sir.

Cross-q. 4. Have you been confined pretty closely to the post-office business, as chief clerk, and thus prevented from cultivating a general acquaintance with the lot owners?

Cross-a. 4. Extremely so. I go to work about six (6) o'clock in the morning, work all day, and then go to bed. My social habits are rather limited.

Cross-q. 5. Do you know the fact that the cemetery was under the control and management of one or two non-residents of the District of Columbia, who had no interest in the cemetery whatever, except for the mere purpose of speculation?

(Objected to by J. Hubley Ashton, as argumentative.)

Cross-a. 5. I do not, positively.

Cross-examination closed.

Redirect by J. HUBLEY ASHTON:

R. D. Q. 1. What was your reason for declining to sign the petition?

A. 1. I esteemed Mr. Clendenin as a friend, and a man who had always treated me politely and courteously, and then I did not know the merits of case, and refused to sign it.

R. D. Q. 2. You had no complaint to make against the management of the cemetery?

A. 2. No, sir; and I certainly never heard of any complaint until this difficulty arose.

R. D. Q. 3. You, yourself, had no complaint to make against the cemetery matters?

(Objected, by Mr. Bartley, as leading.)

A. 3. None in the world.

L. TREE.

Subscribed and sworn to before me this 8th day of October, 1878.

BARTRAM ZEVELY,
Examiner in Chancery.

325 DISTRICT OF COLUMBIA:

I, Bartram Zevely, a United States commissioner and examiner in chancery for the District of Columbia, duly appointed by the supreme

court for said District, do certify that the foreging depositions was taken down and reduced to writing by me in the presence and from the statements of the witnesses, at the time and place designated in the caption, and was then and there read over by me to the witnesses, and by them subscribed in my presence, and I was attended by the counsel of both parties, respectively; and the witnesses were first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties in said cause, or in any manner interested therein.

BARTRAM ZEVELY,
Examiner in Chancery and United States Commissioner, District of Columbia.

In the supreme court of the District of Columbia.

THE GLENWOOD CEMETERY CO.
vs.
J. B. CLOSE ET AL. } In equity. No. 5877.

Deposition in the above action taken before me and sealed up by me, directed and transmitted to the clerk of the above-named court.

W. MUIRHEAD,
United States Commissioner, District of New Jersey.

Filed December 14, 1878.

R. J. MEIGS, *Clerk.*

326 In the supreme court of the District of Columbia, the 18th day of November, 1878.

THE GLENWOOD CEMETERY CO.
vs.
JOSEPH B. CLOSE. } No. 5877. Equity docket 17.

The President of the United States to William Muirheid, a United States commissioner, No. 1 Montgomery street, Jersey City, N. J., greeting:

Know ye, that in confidence of your prudence and fidelity you have been appointed, and by these presents you, or any two of you, are invested with power and authority to examine Joseph B. Close as a witness for the defendants in the above-entitled cause, upon this commission orally; and therefore, you are hereby commanded, at a certain day and place, or certain days and places, to be appointed by you, to cause said witness to come before you, and then and there examine him orally, on oath or affirmation, and reduce his testimony into writing, to be signed by said witness, and, having so done, annex the same to this writ, closed up under your seals, and make return thereof into said court with all convenient speed.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk,*
By M. A. CLANCEY,
Assistant Clerk.

The execution of this commission appears in the schedule hereto annexed.

[SEAL.] W. MUIRHEID,
United States Commissioner, District of New Jersey.

(Indorsed:) 5877. Equity docket 17. Glenwood Cemetery vs. Joseph B. Close. Commission to take testimony of Joseph B. Close. Issued November 18, 1878.

In the supreme court of the District of Columbia.

THE GLENWOOD CEMETERY CO.
vs.
J. B. CLOSE ET AL. } In equity.

Deposition of Joseph B. Close.

327 Deposition of Joseph B. Close, taken before me, William Muirheid, United States commissioner, at my office, No. 1 Montgomery street, in Jersey City, New Jersey, pursuant to the authority of the commission issued to me in this cause, and hereto annexed.

Present, Charles H. Winfield, counsel for defendants; Th. Jessup Miller, counsel for complainant.

Notice of taking depositions admitted.

JOSEPH B. CLOSE, being duly sworn, on his oath, says:

Examined by Mr. WINFIELD:

Question 1. State your name, age, residence, and occupation.

Answer. Joseph B. Close; age 68; resident of Bayonne City, New Jersey; farmer.

Q. Are you one of the defendants in the above-entitled suit?

A. Yes.

Q. 3. Where did you reside, and in what business were you engaged in the year 1853?

A. I resided in New York, and was engaged in the clothing business.

Q. 4. Were you at that time acquainted with William S. Humphreys, who is named as one of the defendants in the above-entitled suit? Is said Humphreys now living, and if not, when and where did he die?

A. I was; and I believe he died about two years ago in New York City.

Q. 5. Produce and hand to the commissioner, to be used as evidence in the above-entitled cause, copies of the records of the deeds hereinafter named in the land records of the District of Columbia, certified by the recorder of deeds of the said District—that is to say, the deed from Junius J. Boyle and wife to William S. Humphreys, dated April 2, 1852; the deed from William S. Humphreys and wife to Joseph B. Close, dated April 7th, 1853: the deed from William S. Humphreys and wife to Joseph B. Close, dated June 22, 1854; the deed of trust from William S. Humphreys to Charles S. Wallach, trustee, dated April 2, 1852; deed of release from Charles S. Wallach, trustee, to William S. Humphreys, dated June 1, 1850?

A. The witness here produces and identifies the deeds, and they
328 are marked in the order named; J. B. C., No. 1; J. B. C., No. 3; J. B. C., No. 4; J. B. C., No. 5; and J. B. C., No. 6; and are hereto annexed.

Q. 6. State whether or not you are the Joseph B. Close, named as grantee in the said deeds from William S. Humphreys, dated respectively, April 7, 1853, and June 22, 1854, and state whether or not the William S. Humphreys, who is named as grantor in the said deeds, and in the said deed of trust dated April 2, 1852, and as grantee in said deed of release dated June 1, 1857, is the same William S. Humphreys who is named as one of the defendants in the above-entitled suit?

A. I am; and he is the same person.

Q. 7. State whether or not the tracts of land described in the said several deeds include and embrace the land which is the subject of the above-entitled suit?

A. They do.

Q. 8. Had you any agreement or understanding with the said William S. Humphreys at the time he became the owner of the tracts of land described in, and conveyed by, the said deed from Junius J. Boyle and wife to the said Humphreys, dated the 2d of April, 1852 (a copy of which you have produced and annexed to your deposition, as Exhibit J. B. C., No. 1), by which you acquired, or had, or were entitled to have any right, title, or interest, legal or equitable, in the said tracts of land, or any part of the same?

A. No, sir.

Q. 9. Had Randolph S. Evans, William Phelps, and George Clendenin, or either or any of them, or had the other persons, or either of them, named in section 1 of the act of Congress approved July 27, 1854, entitled "An act to incorporate the proprietors of Glenwood Cemetery," any agreement or understanding, so far as you know, with the said William S. Humphreys, at the time he became the owner of the tracts of land mentioned and referred to in the last preceding interrogatory, by which they or either or any of them acquired, or had, or were, or was, entitled to have any right, title, or interest, legal or equitable, in the said tracts of lands, or any part of the same?

A. None that I know of.

Q. 10. Did you know at the time the said William S. Humphreys purchased the said tracts of land described in and conveyed by the
329 said deed from Junius J. Boyle and wife, dated April 2, 1852, the purpose of which he, the said Humphreys, acquired the said land or the use which he intended or designed to make of the same?

A. No, sir.

Q. 11. If you state that you were acquainted with the said William S. Humpheys in the year 1853, state the nature of your relations with him.

A. Friendly, only.

Q. 12. State what application, if any, was made by the said William S. Humphreys to you, in the month of April, or about that time, for the loan of money, and state what loan or loans of money, if any, you then made him, and what security you took for the repayment of the moneys so loaned?

A. He applied for a loan to assist him in his operations in business and

otherwise, I suppose. I agreed to make him a loan of $20,000, and did make it. I took one moiety of this property purchased, with the agreement that the money should be spent upon it.

Q. 13. If you state, in your answer to the last preceding interrogatory, that you loaned the said William S. Humphreys any sum or sums of money in the month of April, 1853, or about that time, and that one undivided moiety of land described in the deed from Junius J. Boyle to the said Humphreys, dated April 2, 1852, was conveyed to you by the said Humphreys, by the deed dated April 7, 1853, as security for the repayment of the moneys so loaned, state whether or not you had any, and, if any, what knowledge at that time of any project for the establishment of a cemetery in the District of Columbia by the said Humphreys, or by any of the persons named in the act of Congress approved July 27, 1854, entitled "An act to incorporate the proprietors of Glenwood Cemetery," or of any purpose or efforts on the part of the said Humphreys, or any of the persons named in the first section of the said act of Congress to convert into a cemetery the whole or any part of the lands described in the said deeds?

A. That was the first I knew of his operations, when he applied for this loan, namely, of any design to form a cemetery in the District of Columbia. I had no knowledge previous to that time. I did not know the other parties who were connected with it.

Q. 14. What, if any, further or other loans or advances of money
330 did you make to the said William S. Humphreys after the month of April, 1853; and what was the aggregate amount of all the loans or advances of money made by you to him prior to June, 1854?

A. I made, in different loans in that agreement, about $27,000. I can't say exactly; it was all in 1854, it was different times, and amounted to $27,000. My accounts in this matter all through were burnt up in a store in Broadway, so I can't refer to that further; that is the reason that I can't give dates. It was loaned in amounts from $500 to $1,000 at a time. I can't tell the exact amounts; he drew on me as he wanted to pay debts.

Q. 15. At what time, or about what time subsequent to April, 1853, did you first receive information concerning any project or purpose of the said William S. Humphreys to establish a cemetery in the District of Columbia?

A. The first knowledge I had of it was the time he applied for the loan; I believe it was in April, 1853. It is so long ago I can't recollect every little particular.

Q. 16. What, if any, application was made to you by the said William S. Humphreys for the further loan of money, in June, 1854, or about that time; and what was the immediate occasion of that application, if any was made?

A. He told me he was in failing circumstances and not able to carry out his part of the agreement in finishing the cemetery, and wanted me to furnish the means.

Q. 17. What, if any, loan of money did you then make to the said William S. Humphreys, and what security did you take therefor?

A. I didn't loan him any money after that.

Q. 18. What further loans of money, if any, were made by you to the said William S. Humphreys subsequent to the 22d day of June, 1854?

A. I made him no further loan.

Q. 19. What was the aggregate amount, or about the aggregate amount, of all loans or advances of money made by you to the said William S. Humphreys up to the 24th day of September, 1859?

A. About $27,000.

Q. 20. State what knowledge you have of the notes secured by the deed of trust referred to in the 14th paragraph of your answer in this case, and by whom they were paid, when they matured, and produce and
331 identify and hand to the commissioner, to be used as evidence in this suit, any of the notes secured thereby in your possession?

A. I hadn't any knowledge of the notes. I paid them when they became due, and forwarded them to my solicitor in Washington, Mr. Wilson. I have none of the notes now in my possession.

Q. 21. State whether or not any agreement was made between you and the said William S. Humphreys in June, 1854, for the conveyance by you to the said Humphreys of said property conveyed to you by him, and, if the same was in writing, and is in your possession, produce the original thereof, and hand the same to the commissioner, to be used in evidence in this case. If the said agreement is not in your possession, or under your control, state when you last had it, or saw it, and what search or effort you have since made to find it, and whether or not you have been able to find it.

A. The agreement was made in writing; it is not in my possession; I don't remember of seeing it since my papers were burned, and I have examined all my papers, and can't find it.

Q. 22. If you are not able to produce the original copy of the said agreement, state the contents of the said agreement, and whether or not it is the agreement referred to in Exhibit No. 7 to your answer filed in the above-entitled case?

A. There was an agreement made between us at this time that I should furnish money to complete the cemetery, and endorse notes for him to the amount of $5,000; these notes were payable at the end of five years; and this agreement permitted Mr. Humphreys to come in again for one-half of the premises, providing he paid them at maturity—all of them—which is the agreement referred to in Exhibit No. 7 in my answer.

Q. 23. What, if any, payments were made by said Humphreys to you in respect of his indebtedness to you, and what was the pecuniary condition of the said Humphreys in September, 1859?

A. No payments whatever were made to me; Mr. Humphreys was in very poor circumstances in September, 1859?

Q. 24. Produce, and identify, and hand to the commissioner to be read and used in evidence in this case, any relinquishment executed by
332 said Humphreys to you in September, 1859. Mark, or request the commissioner to mark, the said instrument, to be annexed to your deposition as "J. B. C., No. 7."

A. I produce the relinquishment, and request the commissioner to mark it "J. B. C., No. 7."

(The paper is so marked.)

Q. 25. State into whose hands the moneys advanced or loaned by you to the said Humphreys were actually paid, and what use was made of said moneys?

A. They were paid to Mr. Humphreys, or to his order, and used by him.

Q. 26. State what sums the said Humphreys contributed of his own moneys, in addition to the moneys borrowed of you, towards the purchase of the ground described in the bill of complaint in this case, and towards the preparation and construction of said cemetery.

A. He told me he was out about $7,000 of his own money.

Q. 27. What, if any, moneys were contributed by any person other than you and the said Humphreys towards the purchase of said land, and the preparation and construction of said cemetery?

A. None that I know of.

Q. 28. Did you ever authorize the use of your name as one of the corporators in the said act of July 27, 1854, to incorporate the proprietors of the Glenwood Cemetery?

A. No, sir.

Q. 29. Did you ever, at any time, make or further any application to either House of Congress, or to any member thereof, for the passage of the act of Congress, approved July 27, 1854, entitled "An act to incorporate the proprietors of Glenwood Cemetery?"

A. No, sir.

Q. 30. Did you aid or assent in any way whatever in procuring the passage of the said act of Congress of July 27, 1854?

A. No, sir; I know nothing about it.

Q. 31. Did you, at any time, agree with the persons named in the 1st section of the said act of July 27, 1854, to form a company or association to establish and maintain a cemetery in the District of Columbia?

A. No, sir.

333 Q. 32. When, and from whom did you first receive information of the passage of said act of Congress of July 27, 1854?

A. I first received information from Mr. Humphreys about 1854; I didn't know when the act passed; I didn't know anything about it at all. He informed me he got a charter.

Q. 33. Who had the exclusive management and control of the land and premises described in the bill of complaint, from April, 1852, to September, 1854?

A. William S. Humphreys.

Q. 34. What personal knowledge had you of the preparation of the plats and plans for the said cemetery?

A. I had none.

Q. 35. Under whose direction were the plats and plans for the cemetery prepared; and what, if any, directions did you give concerning them?

A. Under William S. Humphreys' directions, and I gave no directions concerning them.

Q. 36. What directions did you give, and what knowledge had you concerning the ceremonies that took place in respect of the cemetery, on the 3d day of August, 1854?

A. No directions; nor no knowledge of that until afterwards.

Q. 37. Under whose exclusive direction and control did these ceremonies take place; were you present at those ceremonies?

A. Under the direction of William S. Humphreys; I was not present.

Q. 38. Was any action or proceeding, to the best of your knowledge, information, or belief, taken by the persons named as corporators in the 1st

section of the said act of Congress of July 27, 1854, after the passage of the said act, to accept the charter granted by the said act?

A. None that I know of.

Q. 39. Do you know of any meeting ever having been held or called by the persons named as corpo tors in the first section of the said act of Congress of July 27, 1854, for the purpose of accepting or assenting to the said charter, or for the purpose of organizing thereunder?

A. No, sir.

Q. 40. Did you meet with the said corporators, or any of them,
334 after the passage of the said act of Congress, for the purpose of accepting the said charter, or organizing under said act?

A. No, sir.

Q. 41. After the passage of the said act of Congress had you any conference, or conversation, with the said William S. Humphreys, or with any of the persons named in the first section of the said act of Congress, with reference to the acceptance of the charter granted by the said act, or with reference to an organization under the said act?

A. No, sir.

Q. 42. Do you know, or have you ever heard of the existence of any records, books, or minutes, showing or purporting to show, the proceedings of the persons named in the said act of Congress, or any of them, with reference to an organization under said charter?

A. I do not know, and I never have.

Q. 43. The four last-named persons in the first section of the said act of Congress approved July 27, 1854, are Joseph B. Close, William Phelps, William S. Humphreys, and Randolph S. Evans. Did you ever meet with the three last-named persons, or any of them, after the passage of the said act, for the purpose of accepting the charter granted by said act, or organized under the said act?

A. No, sir.

Q. 44. Did the four persons named in the last preceding interrogatory ever meet together, or organize themselves as a board of managers, under the said act of July 27, 1854?

A. Not to my knowledge.

Q. 45. Do you know, or have you ever heard, of the existence of any records, books, or minutes, showing, or purporting to show, any acts or proceedings of the said four last-named persons in the first section of the said act, in the capacity of managers of the corporation, authorized by the said act?

A. I do not know, and have never heard.

Q. 46. Was any election ever held, under the said act of Congress, for president and managers of the said corporation?

A. Not to my knowledge.

Q. 47. Were any by-laws, or rules and regulations, for conducting the affairs of the said corporation, made or prescribed by the said four
335 last-named persons in the 1st section of the said act of Congress, after the passage of said act?

A. Not to my knowledge.

Q. 48. Do you know, or have you ever heard, of William Phelps and Randolph S. Evans, or either of them, exercising, or claiming any right to exercise, any power, authority, or control in the management of said

cemetery; or participating, or claiming a right to participate, directly or indirectly, in the management of the said cemetery?

A. I do not know; nor I have never heard.

Q. 49. Do you know persons by the names of William Phelps and Randolph S. Evans? If so, state, if know, whether they are now living, and where they reside.

A. I only know Mr. Phelps, and he, I believe, is living; doing business in Canal street, New York. I do not know Mr. Randolph S. Evans, never saw him that I know of.

Q. 50. Do you know, or have you ever heard, whether or not the said persons authorized their names to be used as corporators in the said act of Congress of July 27, 1854? State your knowledge or information on that subject.

A. I have asked all that I am acquainted with, and they said they never were consulted at all.

Q. 51. Do you know, or have you ever heard, of Charles B. Calvert, George Parker, William B. Todd, James C. McGuire, William A. Bradley, Charles S. Wallach, Abner Miller, William Banks, William Phelps, Randolph S. Evans, or any of them, exercising, or claiming the right to exercise, any powers and privileges as corporators or otherwise, or any corporate functions under the charter granted by the said act of Congress of July 27, 1854?

A. I do not know, and I have never heard.

Q. 52. Do you know, or have you ever heard, of any of the persons named in the said act of Congress, or any of them, except the said Humphreys and yourself, exercising, or claiming the right to exercise, any control in the management of the said cemetery?

A. No, sir.

Q. 53. Do you know, or have you ever heard, of the issue of any stock, or certificate of stock, in respect of said cemetery, under the provisions of said act of Congress or otherwise?

A. No, sir.

336 Q. 54. Has there ever been issued to you, or have you ever held, or has any one ever held for you, any stock or certificates of stock in respect of said cemetery?

A. No, sir.

Q. 55. Was the pamphlet, a print of which is referred to in the bill of complaint as Exhibit A, prepared by you, or by your direction, or with your knowledge?

A. It was not; I knew nothing about that when it was issued.

Q. 56. When did you first know of the existence of said pamphlet?

A. Mr. Humphreys gave it to me about the time the charter passed.

Q. 57. When, and from whom, did you first receive said pamphlet?

A. I received it from Mr. Humphreys about that time.

Q. 58. Before that time had you any knowledge of its existence?

A. No, sir.

Q. 59. When, and by whom, were the so-called corporate seal and form of the certificate to be given to the purchaser of lots determined upon and prepared?

A. Mr. Humphreys; I don't know anything about them except when I got possession, I think in about 1857—somewhere along there—1856 or '7.

Q. 60. Were they prepared by your direction, or with your knowledge; and, if not, when and from whom did you first hear of their preparation?

A. No, sir; I first knew of them the time I took possession.

Q. 61. Have you ever received from the persons named in said act of Congress, or any or either of them, or from any organization formed under said act of Congress, any money or other valuable consideration whatever for, or in respect of, the property described in the bill of complaint?

A. No, sir.

Q. 62. What, if any, conveyance had you made prior to the institution of this suit, of the property described in the bill of complaint other than the deeds or certificate issued from time to time to the purchasers of lots and the deed to Frederick N. Close?

A. None.

337 Q. 63. When did the property described in the bill of complaint come under your exclusive control and management?

A. About 1858 or '9.

Q. 64. Who had the immediate charge of the property as your representative?

A. Mr. George Clendenin.

Q. 65. Of the tract described in the bill of complaint, how many acres were laid off into lots, and what was the condition of the remainder?

A. I understood about thirty were laid off into lots, the remainder was used as farm land.

Q. 66. Since April, 1859, in whose exclusive possession and occupancy has been the tract of sixty acres not laid out into lots and not included in the cemetery?

A. Mr. Clendenin's.

Q. 67. Who has had the exclusive management and control of the cemetery grounds since April, 1859?

A. Mr. Clendenin, the superintendent.

Q. 68. Since the cemetery was opened how many lots have been sold, and what disposition has been made of the proceeds of sale?

A. There has been about 1,050 full lots sold. The expenses of the cemetery were first paid out of the proceeds and the balance paid to me.

Q. 69. Since the cemetery was opened, and up to January, 1876, what have been the gross receipts from the property?

A. About $160,000.

Q. 70. Of the gross receipts what is the aggregate of the sums expended in the care, preservation, and improvement of the cemetery?

A. About $90,000.

Q. 71. What, in the aggregate, do the sums amount to which have been unpaid to you, and what interest have you received on the moneys expended by you in respect of the cemetery?

A. There has been about $60,000 unpaid to me. I should think between five and six per cent.—it aint six per cent. anyhow.

Q. 72. What, if any, complaints have been made to you by the lot owners concerning the management of the cemetery by Mr. Clendenin?

A. None whatever.

338 Q. 73. What means did you adopt, after hearing of the efforts to obtain an amendment of the charter, to ascertain what grievances the lot owners had?

A. I issued the circular which I now produce, and request the commissioner to mark it Exhibit W. M. 1, and sent it to every person whose name appeared on the petition to Congress.

(This circular is here marked Exhibit W. M., No. 1.)

And being cross-examined by Mr. MILLER, the witness says:

Cross-q. 1. When did you first learn of Humphreys' purchase of this Boyle land?

A. I think it was about the time he came to borrow money. There may have been floating rumors about it, but anything that I could rely upon was at that time when he came to borrow money.

Cross-q. 2. How long was he negotiating for this first loan of $20,000?

A. Probably not a week.

Cross-q. 3. In your examination-in-chief you testified that you took one moiety of this land as security for the repayment of $20,000 with the agreement that the money loaned should be spent on the land?

A. Yes, sir.

Cross-q. 4. How was it to be spent?

A. That I don't know. I suppose in improvements. It was full of briars that had to be grubbed up. Mr. Humphreys said it was a very great thicket, and it would require a large amount of money to grub it and put it into shape.

Cross-q. 5. For what purpose was it to be put into shape?

A. I heard while it was being done it was for a cemetery.

Cross-q. 6. Did you or not know at the time you loaned the $20,000 that this land was to be converted into a cemetery?

A. Yes, sir; I understood so.

Cross-q. 7. The aggregate of your loans to Mr. Humphreys amounted to $27,000?

A. Yes, sir; what I call loans, on his account to him.

Cross-q. 8. What other moneys did you expend on the cemetery?

A. I went on expending money till it amounted to about fifty-three or four thousand dollars, what I advanced out of my pocket, including his seven that he spent.

339 Cross-q. 9. You mean that the whole cemetery cost you about sixty?

A. Yes, sir; about $60,000, including Humphreys' $7,000.

Cross-q. 10. When did you advance a further sum beyond the $27,000?

A. After Mr. Humphreys became embarrassed, and agreed to secure me by the whole cemetery grounds.

Cross-q. 11. Was the whole money expended through Mr. Humphreys?

A. Yes, sir; the whole was spent through Mr. Humphreys, on the grounds.

Cross-q. 12. And the further sums you advanced towards establishing the cemetery were expended for you by Mr. Humphreys, as your agent?

A. Yes, sir; by him, as my agent, after I got the deed to it.

Cross-q. 13. And while you owned an undivided moiety, he was your agent as to that?

A. No, sir; it was on his own hook entirely after I got that; until I got the full deed I had nothing to say about it.

Cross-q. 14. At what date do you fix when you got a full deed for it?

A. I got the first deed about 1853 or '4; that was to settle up the first money that was loaned him; then he failed, and said he couldn't carry it out, &c. I then advanced more than I agreed to. I told him that I must be secured, I knowing that he was in failing circumstances, and I must be secured if I advanced any more. That was the arrangement or agreement, and he deeded it all to me under that agreement.

Cross-q. 15. The last deed you refer to in your last answer is the second deed from Humphreys to you?

A. No; that is the first deed. The last deed was in a final settlement. I will state the circumstances, probably, which you don't any of you know. I have stated that there was an agreement that I was to endorse his paper. His creditors, some of them, offered to take his paper payable in five years if I would endorse it. He came with that proposition. I did endorse the paper payable in five years from date. It ran up to about 1859 before it came due. And this agreement was, if he met this paper and these obligations that he should have the half of the cemetery
340 back again, and I own the other half, and we would divide the expenses. In 1858 or 1859 he failed to meet this paper or this part of the purchase-money—a $5,000 note, I think it was, or about that. Then, according to the agreement, I came in possession of the whole of it, and he executed a deed. That is the second deed. It is dated 1854, I think. It is so long ago I don't remember particularly, but I think he dated it back to 1854, to cover everything. That was in 1859, when the final settlement was made in full, and I think that that last deed was dated back to 1854. At any rate, the recording of it ought to show. No doubt it was recorded.

Cross-q. 16. Did you not obtain security for the first $20,000 you loaned Mr. Humphreys?

A. Yes, sir; on one moiety of the ground.

Cross-q. 17. You say that was security for $20,000?

A. Yes, sir; for the repayment of it.

Cross-q. 18. Does it not recite that it was in consideration of $4,500; and was not $4,500 exactly one-half the cost of the land?

A. I don't know, sir. That was a note paid to Mr. Boyle; that is, I sent the money; I know I paid the note; I was thinking it was $5,000.

Cross-q. 19. Then, since April 7, 1853, you have been interested in at least one moiety of this land?

A. Yes, sir. That is, as far as security is concerned; it is my security for the money. I took the deed or title to it as security. I didn't consider I was a partner in any way.

Cross-q. 20. The next deed of the other moiety to you is on the 22d of June, 1854?

A. That is, the deed I refer to, I think, was sent to me. In 1858 or 1859 there was a deed given to me. If that aint it, it has been lost. I think it has been dated back to cover all the circumstances between us in money matters from 1854 to 1859.

Cross-q. 21. After the delivery of that deed in 1854 you had been interested as absolute owner of at least a part of the cemetery all the time, without any qualification; am I to understand it so?

A. Yes; you may understand it that I was part owner after 1854; after the 1854 deed was given.

341 Cross-q. 22. From that time until 1859, when you acquired exclusive control of the property, was Mr. Humphreys your agent as to your interest therein?

A. Yes, sir.

Cross-q. 23. And had authority from you to do whatever he deemed best?

A. Well, I don't think that I ever gave him any authority; I never called for possession of it; I had that confidence in him. His brother-in-law was appointed there; he had owned it a couple of years and had grubbed it up, and I had that confidence in him I let him have the money and spend it as he thought proper.

Cross-q. 24. Did you know, or did you hear in any way that he was going to apply for a charter for a cemetery?

A. No; I don't think I ever heard of it; I don't remember of ever hearing of his application for it.

Cross-q. 25. Did you make any objection to anything that Humphreys did in relation to this property while he remained in possession of it?

A. Not that I remember.

Cross-q. 26. When was this 30 acres laid out into lots?

A. That I don't know, sir; when I first knew anything about it, I understood the 30 acres was laid off.

Cross-q. 27. Did you ever, or did you when you first learned of it, make any objection to Humphreys obtaining a charter for the cemetery?

A. No, sir.

Cross-q. 28. When did you first find any exception or cause of exception thereto?

A. When this suit was commenced.

Cross-q. 29. In your answer you state that about 2,200 lots in the cemetery have been sold?

A. Yes, sir.

Cross-q. 30. Did you execute, in the name of this corporation, deeds to every such purchaser of his lot?

A. No, sir.

Cross-q. 31. Did you execute deeds to any such purchaser, in the name of this corporation, of his lot?

A. I executed deeds to about 1,800 for lots and portions of lots—400 were what we call "public grounds," single plats of 6 by 4, or something of that kind—something about 2,200 lot holders altogether.

342 Cross-q. 32. Were the deeds which you executed all substantially in this form? (Showing Complainant's Exhibit 6.)

A. Yes, sir; I believe they were.

Cross-q. 33. How long prior to the commencement of this suit were you president of the Glenwood Cemetery Company?

A. I acted as president since, I think, it was about 1856 or '7, when the first deeds were issued.

Cross-q. 34. Were you not president on August 3, 1854?

A. I don't remember; the first I knew anything about being president of it was when Mr. Humphreys sent me a printed pamphlet; that first pamphlet, I suppose, states the time.

Cross-q. 35. Is this Exhibit A a copy of that pamphlet?

(Complainant's Exhibit A shown to witness.)

A. 1854, I should think, it was; I should think this was a verbatim

copy of what he sent me; I got one afterwards, but that included the ceremonies of the dedication.

Cross-q. 36. This does also.

A. This can't be that one, because that had all the printed sermons in.

Cross-q. 37. This has all the printed sermons in.

A. What, of the ministers?

Cross-q. 38. Yes.

A. I had an impression it was a very thick one; that must be the first one I received.

Cross-q. 39. Did you receive this soon after these dedicatory services took place?

A. I think I did.

Cross-q. 40. Did you then, or at any time afterwards, before the commencement of this suit, make any objection to this appropriation of the land here attempted to be made in your name?

A. No, sir.

Cross-q. 41. After the issue and general publication of this pamphlet, for more than twenty years purporting to be president, did you go on and sell lots, receiving, in the aggregate, $160,000?

A. No, not lots alone, but the whole workings of the cemetery amounted to that. If I hired a man a week, we paid him for that week's work, and that went into the expenses.

343 Cross-q. 42. During all this time, then, you were willing that the public should generally believe that the cemetery was incorporated by this act of Congress, that due organization had been made, that you were its president, and the other officers named on the third sheet of the pamphlet, Exhibit A, were duly qualified?

A. I don't think that I ever thought of that subject during that time; I know that I had no connection with any of the officers appointed, except the superintendent.

Cross-q. 43. Were not all your acts in relation to that property during this period done in the name of "The Glenwood Cemetery, incorporated by act of Congress, July 27, 1854?"

A. Well, they were derived from that act, but they were not done in accordance with it, because I had no connection with any one else; the property belonged to me, and I acted as though it was my private property.

(Question repeated).

A. Yes.

Cross-q. 44. In answering the 61st interrogatory-in-chief, you state you have never received any money or other valuable consideration for or in respect of the property described in the bill of complaint. You mean to be understood exclusive of the $160,000 to which you have elsewhere testified?

A. Yes; I meant to be understood that it was from the management of the cemetery I received the $160,000; I never received a dollar outside of the receipts of the cemetery.

Cross-q. 45. In answer to the 62d interrogatory you state that you have never made any other conveyance of this property than the deeds of lots and the deed to your son, Frederick W. Close, mentioned in these proceedings?

A. Yes, sir.

Cross-q. 46. Did you not sign an agreement to transfer your interest in Glenwood Cemetery, and all the stock therein to which you might be entitled, together with all the rents of your realty, to one Charles H. Borchelling, receiver?

A. I think legally, no, sir.

Cross-q. 47. Did you not sign or execute such a transfer?

A. Never executed such a transfer—legally, I mean.

Cross-q. 48. Did you sign such a transfer?

344 A. I signed the paper there; I didn't read it.

Cross-q. 49. What do you mean by saying that you did not execute such a transfer?

A. I mean to say there was no seal upon it; these are my reasons for saying it was not executed.

Cross-q. 50. What was the consideration of this conveyance to your son?

A. I think it was $1.

Cross-q. 51. Was any consideration whatever paid?

A. That was the amount of it.

Cross-q. 52. How soon afterwards did your son execute a deed reconveying this property to you?

A. Probably about the same time.

Cross-q. 53. The execution of the two papers was contemporaneous?

A. About so, I should think.

Cross-q. 54. Have you ever caused the deed from your son to yourself to be recorded?

A. I sent it on there to have it recorded?

Cross-q. 55. When?

A. I should think within a year.

Cross-q. 56. After the commencement of this suit?

A. Yes, sir.

Cross-q. 57. What was the purpose of your attempt to convey this whole property absolutely to your son, and withholding from the record his reconveyance to you at that time?

A. At the time that he gave me the deed, you mean?

Cross-q. 58. Yes.

A. I have a good many family difficulties, and it related mostly to that. I don't know that I have any other special reason.

Cross-q. 59. Was it not part of your purpose to hinder and delay the complainant in the assertion of its rights to this property?

A. No, sir.

Cross-q. 60. After this conveyance did you not continue in the possession of the property, just as before?

A. Yes, sir; by my son's authority.

Cross-q. 61. Did you purport to be his agent in your action?

A. That was propounded to him, and he consented to it.

345 Cross-q. 62. Did you not continue to act in the name of the Glenwood Cemetery Company as before?

A. No, sir.

Cross-q. 63. Not after the deed to your son?

A. No, sir; he signed the deeds after that; all of them, himself, as to the financial part of it.

Cross-q. 64. Since the institution of this suit have you executed another conveyance of this property by way of mortgage?

A. I have given a trust deed upon it. There is no conveyance upon it. I executed a deed to Abram Winfield.

Cross-q. 65. Look at this paper and see if you identify it. (Showing paper, a certified copy of mortgage, Joseph B. Close to Abram Winfield, which is offered in evidence and marked Exhibit W. M. 2.)

A. It appears to me to be the paper, though I can't remember the whole of it.

Cross-q. 66. Have you executed any other conveyances in relation to this property than those testified to here to-day?

A. No, sir.

Cross-q. 67. Was this trust deed to Abram Winfield executed after you had answered in this case?

A. It was, if it was after the date of that.

Cross-q. 68. You answered on the 29th of April, 1878, and you executed this deed, apparently, on the 17th of August, 1878.

A. I executed it the day it was written; I guess that was the time.

Cross-q. 69. In answer to the 70th interrogatory-in-chief you state that of the gross receipts you had expended $90,000 upon the cemetery.

A. Yes, sir.

Cross-q. 70. How was that expended?

A. In current expenses, improvements, &c.

Cross-q. 71. Does that include salaries of employees?

A. Yes, sir.

Cross-q. 72. Does that include any money expended in the laying out of the property, the building of gate-way?

A. No; I didn't include that, nor the mausoleum—didn't include anything of that kind. I embodied that in the expenses of the cemetery.

346 Cross-q. 73. In your answer in this case you state that you had found evidence that satisfied you that said charter had never been accepted?

A. Yes, sir.

Cross-q. 74. Any that there had never been any election of managers or officers of said company?

A. Yes, sir.

Cross-q. 75. Please state what evidence?

A. Never found any evidence.

Cross-q. 76. Then you meant by your answer that you did not find any evidence that the charter had been accepted?

A. I mean that I never thought of the matter until this suit was commenced, when my attorney brought it to my notice that the property stood in my name, that there had been no company formed, and it had never been deeded to them. It is the first intimation I had of the matter at all.

Cross-q. 77. Then, by evidence in this answer you mean that you were advised by counsel so?

A. Well, no; I, of course, was advised; but the moment it was brought up I saw the point, and he said at once, "Why, there is no such company." Of course I had experience enough to see, when I came to look at the matter as it stood, it was so.

Cross-q. 78. You don't mean to be understood, then, that you found any new evidence that you were not aware of before?

A. Yes, I mean to say I didn't know anything; didn't think of this thing; didn't know anything about it; I was trusting to my friend who was managing the matter; I supposed he was attend to the matter, and never looked after it all until this matter came up; then I got my deeds and examined them, and found that there was no company organized; the property never was deeded to them.

Cross-q. 79. In the fourth paragraph of your answer, you state that you had no personal knowledge that the rules and regulations contained in said pamphlet (meaning Exhibit A) were prescribed by any board of managers?

A. No, sir; had no knowledge.

Cross-q. 80. Are those rules and regulations not the same that are annexed to every one of the deeds of lots, to the number of 1,800, which you have testified you executed as president of the corporation?

A. I think they are, sir.

347 Cross-q. 81. Have you at any time made any objection to any of these rules until after the commencement of this suit.

A. No, sir.

Cross-q. 82. Have you at any time claimed, as president of Glenwood Cemetery corporation, that the 60 acres not laid off into lots constituted a part of the cemetery property?

A. Yes, sir; I have.

Cross-q. 83. When?

A. I claimed that they were a part of it a few years ago, in a tax-bill that was sent in before this suit came to my knowledge.

Cross-q. 84. Did you not continuously, as president of this corporation, claim that this whole tract of 90 acres was the property of the corporation, dedicated for burial purposes, in accordance with its charter, and every condition therein fully maintained by the said company, and therefore exempt from taxation?

A. I make the claim that the property was exempt from taxation as a burial ground from that supposed charter—the whole property.

Cross-q. 85. Did you not so maintain and claim for a period of at least 20 years?

A. No statement of the time made about it, no further than that particular year; the year's taxes.

Cross-q. 86. Did you ever, until about the time of the commencement of this litigation, claim that the 60 acres was held by any other or different title than the 30 acres laid out into lots?

A. No, sir; never made any claim, nor had no reason for it.

Cross-q. 87. When was George Clendenin appointed superintendent?

A. That I don't know, sir.

Cross-q. 88. Has he not always acted as superintendent for and behalf of the corporation of which you claim to be president, until about the time of the commencement of this suit?

A. No, sir.

Cross-q. 89. Was he not superintendent during the whole time that you were president?

A. Yes, sir.

348 Cross-q. 90. At what time then did Clendenin cease to be superintendent on behalf of the corporation?

A. He ceased to be my superintendent when the plaintiffs took possession of the cemetery.

Cross-q. 91. Was he not appointed by you as president of the corporation?

A. No, sir; no further than action. I never made any agreement or bargain with Mr. Clendenin to act there. Clendenin came to me as superintendent with the property. He was appointed by his brother-in-law.

Cross-q. 92. Were not all your dealings with Clendenin done in the name of the corporation as its president?

A. All the dealings so far as the cemetery is concerned.

Cross-q. 93. He was then acting as the agent of the corporation up to the date of the amendment of the charter, I suppose?

A. I don't know anything about that. He was my agent, that is all I know about it. He had no authority from any corporation as I know of, and he had none from me; never made any agreement with him whatever. He came to me with the grounds. His salary remained the same ever since he came, without any alteration between him and me, or anything that would tend to alter it. He stayed there ever since.

Cross-q. 94. He staid there on the same terms until he lost his place?

A. Yes, sir; until he lost his place. Then he was hired with Mr. Hunter, who paid him the same salary, at least, he said it was the same.

Cross-q. 95. What protection, for the permanence of the cemetery, did you give, or propose to give, to these purchasers of lots, after your interest therein should cease by the sale of all the lots?

A. The supervision that we exercised over them. I intended we should continue to have the protection of the lots—of the property there.

Cross-q. 96. After the exhaustion of the proceeds of the sale of the lots, what, then, would there be for the perpetuation of the cemetery?

A. Wouldn't be any for the perpetuation of the cemetery after the exhaustion of the lots.

Cross-q. 97. And you didn't propose to provide any fund for that purpose?

349 A. No, sir; under the circumstances it wasn't necessary.

Cross-q. 98. Until about the time of the commencement of this suit you held the 60 acres of land as also appropriated to the purposes of a cemetery, did you?

A. I expected to appropriate it when it was necessary.

Cross-q. 99. Did you intend to perform any other act, or hold any other ceremony for the purpose of making such appropriation or dedication?

A. I never considered that matter. When it became necessary to appropriate it I should consider the matter.

Cross-q. 100. Did you intend to be understood in writing to the tax collector of the District of Columbia, claiming that the whole land was exempt from taxation, and getting Mr. Clendenin to attend in your behalf to claim that the whole tract of 90 acres was exempt from taxation, that the whole tract was then dedicated for burial purposes in accordance with the charter of the corporation?

A. Yes; I think I did.

Cross-q. 101 (showing paper). Look at Plaintiff's Exhibit C; identify it if you know it.

A. I think that was written by my attorney. I don't remember of seeing it. It is not my signature.

Cross-q. 102. You said that something of the kind was authorized by you?

A. I think likely. I don't identify that at all myself.

Cross-q. 103. You are positive that you didn't write that?

A. I am positive.

Cross-q. 104. Did you write, or instruct anybody to write for you, to the trustees of Glenwood Cemetery that you reserved all lots heretofore sold in the cemetery for the purpose of confirming the deeds heretofore given, or anything to that effect?

A. I don't remember any document of that kind.

Cross-q. 105. I am not talking about a document; did you write to that effect?

A. Not that I remember.

Cross-q. 106. Did you write, on or about the 11th of March, 1877, that "I am in a position, therefore, to assure you and all other lot holders that I am prepared to confirm their deeds, so as to give them a legal title, subject to such rules as may be established, which will probably be the same as heretofore existing," or words to that effect?

350 A. I don't remember writing anything in the way that is worded at all; I don't remember writing it all; it has been my desire, if there was any difficulty about the titles of the lots, to make them right, and do so.

Cross-q. 107. Do you know that, appurtenant to the lots actually conveyed, the right is also conveyed to have all of those 90 acres of land under the management of one corporation, and improved for burial sites? How did you propose to assure the title of these purchasers of lots in this appurtenance?

A. Didn't propose to insure them anything outside of what they purchased.

JOSEPH B. CLOSE.

Sworn to and subscribed before me this 7th day of December, A. D. 1878, at Jersey City, New Jersey.

W. MUIRHEID,
U. S. Com'r, Dist. of N. J.

EXHIBIT J. B. C., No. 1.—*December* 7, 1878.—W. MUIRHEID, *U. S. C.*

This indenture made this second day of April, in the year of our Lord eighteen hundred and fifty-two, between Junius J. Boyle and Ann Eliza Boyle, his wife, of the county of Washington, in the District of Columbia, of the first part, and Wm. S. Humphreys, of the city and State of New York, of the second part, witnesseth, that for and in consideration of the sum of nine thousand dollars, current money of the United States, to them in hand paid at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said parties of the first part have granted, bargained, and sold, aliened, enfeoffed, and conveyed, and, by these presents do grant, bargain, and sell, alien, enfeoff, and convey unto the said party of the second part, his heirs and assigns, all that tract or parcel of land lying and being situate in county of Washington, in the District of Columbia, called "Powell's Dividend," containing by resurvey

seventy-five and a quarter acres, beginning for the same at a distance marked A, near the entrance gate of a farm lately owned by Samuel Harrison Smith, and running thence south sixty degrees west, seventy-five perches;
351 thence, south forty perches; thence north seventy-five degrees west, twelve perches; thence south seventeen degrees east, eleven perches, to a stone numbered twenty; thence south thirty-seven degrees west, one hundred perches; thence south seventy degrees east, seventeen perches; thence southeast by east seventy-eight perches, and thence by a straight line to the place of beginning; and also all that other tract or piece or parcel of land lying and being situate in the county and District aforesaid, containing nine acres, two roods, and thirty-nine perches, beginning for the same at a stake standing on the west side of the road leading from Smith's lane to North Capitol street, and running thence north fifty-eight degrees seventeen minutes west, thirty-two and one-twenty-fifth perches, to a stone numbered seventeen; thence north twenty-two degrees fifteen minutes west, sixty-six and one-seventeenth perches, to a stone numbered eighteen; thence south fifty-eight degrees seventeen minutes east, seventy-five perches, to a stake on the west side of the road; and thence, with the west side of the road, south fifty-six degrees west, forty-two and four-fifths perches, to the place of beginning, with the exception of a small portion of land on the east side of Powell's Dividend, heretofore conveyed to form part of public road, and being the two tracts or parcels of land sold and conveyed to said Junius J. Boyle and Jas. C. Turner by Phineas Bradley, and now called Shamrock Hill, together with all and singular the buildings, improvements, rights, ways, water-courses, privileges, hereditaments, and appurtenances to the same belonging or in any manner appertaining. To have and to hold the said tracts or parcels of land and premises, with the appurtenances unto him, the said party of the second part, his heirs, and assigns, to his and their own proper use, benefit, and behoof, forever, and the said Junius J. Boyle for himself, his heirs, executors, and administrators, by these presents, covenants, promises, and agrees to, and with the said party of the second part, his heirs, executors, administrators, and assigns, that they, the said parties of the first part, and their heirs, the said hereby bargained, sold, and conveyed tracts or parcels of land and premises with the appurtenances, shall and will forever warrant and defend free and clear and from all and every incumbrance or incumbrances of every nature and
352 kind soever, unto him, the said party of the second part, his heirs and assigns, from and against them, the said parties of the first part, and their heirs, and from and against all persons lawfully claiming or to claim by, through, or under them, or any or either of them, and from and against all lawful persons and claims whatsoever.

In testimony whereof the said parties of the first part have hereunto subscribed their hands and affixed their seals on the day and year first hereinbefore written.

[SEAL.] JUNIUS J. BOYLE.
[SEAL.] ANN ELIZA BOYLE.

Signed, sealed, and delivered in the presence of—
T. C. DONN.
J. W. BECK.

DISTRICT OF COLUMBIA,
Washington County, to wit:

We, Thomas C. Donn and Joseph W. Beck, justices of peace in and for the county aforesaid, in the District of Columbia, do hereby certify that Junius J. Boyle, a party to a certain deed, bearing date on the 2d day of April, 1852, and hereto annexed, personally appeared before us in our county aforesaid, the said Junius J. Boyle being personally well known to us the person who executed the said deed and acknowledged the same to be his act and deed.

Given under our hands and seals this 3d day of April, 1852.

T. C. DONN, *J. P.* [SEAL.]
J. W. BECK, *J. P.* [SEAL.]

DISTRICT OF COLUMBIA,
Washington County:

We, Thomas C. Donn and Joseph W. Beck, justices of the peace in and for the county aforesaid, in the District of Columbia, do hereby certify that Ann Eliza Boyle, the wife of Junius J. Boyle, a party to a certain deed, bearing date on the 2d day of April, 1852, and hereunto annexed, personally appeared before us, in our county aforesaid, the said Ann Eliza Boyle, being personally well known to us as the person who executed the said deed, and being by us examined privily, and apart from her said
353 husband, and having the deed aforesaid fully explained to her, she the said Ann Eliza Boyle, acknowledged the said deed to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hands and seals this 3d day of April, 1852.

T. C. DONN, *J. P.* [SEAL.]
J. W. BECK, *J. P.* [SEAL.]

(Endorsed:) Received 6th April, 1852, to be recorded, and same day was recorded in liber J. A. S., No. 38, folio 138, 139, and 140, one of land records of Washington County, District of Columbia.

Examined by

JNO. A. SMITH, *Clerk.*

This is to certify that the within is a true and verified copy of a deed as recorded in liber J. A. S., No. 38, folio 138 et seq., one of the land records for the District of Columbia.

GEO. F. SCHAYER,
Dep. Recorder.

WASHINGTON, D. C., *December* 6, 1878.

EXHIBIT J. B. C., No. 3.—*December* 7, 1878.—W. MUIRHEID, *U. S. C.*

This indenture, made this seventh day of April, in the year of our Lord eighteen hundred and fifty-three, between William S. Humphreys and Catherine R. Humphreys, his wife, of the city of New York, in the State of New York, of the first part, and Joseph B. Close, of the same place, of the second part, witnesseth that for and in consideration of the sum of

four thousand five hundred dollars, current money of the United States, to them in hand paid, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said parties of the first part have granted, bargained, and sold, aliened, enfeoffed, and conveyed, and by these presents do grant, bargain, and sell, alien, enfeoff, and convey, unto the said party of the second part, his heirs and assigns,
354 one undivided moiety or half part or portion of all that tract or parcel of land lying and being situate in the county of Washington, in the District of Columbia, called Powell's Dividend, containing by resurvey seventy-five and a quarter acres, beginning for the same at a distance marked "A," near the entrance gate of a farm lately owned by Samuel Harrison Smith, and running thence south sixty degrees west, seventy-five perches; thence south forty perches; thence north seventy-five degrees west, twelve perches; thence south seventeen degrees east, eleven perches, to a stone numbered twenty; thence south thirty-seven degrees west, one hundred perches; thence south twenty degrees east, seventeen perches; thence southeast by east seventy-eight perches, and thence by a straight line to the place of beginning; and of also all that other tract, piece, or parcel of land lying and being situate in the county and District aforesaid, containing nine acres, two roods, and thirty-nine perches. Beginning for the same at a stake standing on the west side of the road leading from Smith's lane to North Capitol street, and running thence north fifty-eight degrees seventeen minutes west, and thirty-two and one twenty-fifth perches, to a stone number seventeen; thence north twenty-two degrees fifteen minutes west, sixty-six and one-seventeenth perches, to a stone numbered eighteen; thence south fifty-eight degrees seventeen minutes east, seventy-five perches, to a stake on the west side of the road, and thence with the west side of the road south fifty-six degrees west, forty-two and four-fifth perches, to the place of beginning, with the exception of a small portion of land on the east side of Powell's Dividend heretofore conveyed to form part of public road, and being the two tracts or parcels of land now called Shamrock Hill, sold and conveyed to the said William S. Humphreys by Junius J. Boyle and Ann Eliza Boyle, his wife, by indenture bearing date on the 2d day of April, 1852, and recorded in liber 2, A. S., No. 38, folio 138, 139, and 140, one of the land records for the county and District aforesaid, together with and singular the buildings, improvements, rights, ways, water-courses, privileges, hereditaments, and appurtenances to the same belonging or in any manner appertaining, to have and to hold the same, one undivided moiety or half part or portion of said tracts or parcel of land and premises, with the appurtenances, unto him, the said party of the second part, his heirs and
355 assigns, to his and their own proper use, benefit, and behoof forever; and the said William S. Humphreys, for himself, his heirs, executors, and administrators, by these presents covenant', promises, and agrees to and with the said party of the second part, his heirs, executors, administrators, and assigns, that they, the said parties of the first part, and their heirs, the said one undivided moiety or half part or portion of said tracts or parcels of land and premises with the appurtenances shall and will forever warrant and defend unto him, the said party of the second part, his heirs and assigns, from and against them, the said parties of the first part, and their heirs, and from and against all persons lawfully

claiming or to claim by, through, or under them, or any or either of them, and from and against all lawful persons and claims whatsover.

In testimony whereof the said parties of the first part have hereunto subscribed their hands and affixed their seals on the day and year first hereinbefore written.

C. R. HUMPHREYS. [SEAL.]
W. S. HUMPHREYS. [SEAL.]

Signed, sealed, and delivered in the presence of—
SANFORD B. HASTINGS.
JAMES GREEN.

STATE OF NEW YORK,
County of New York, to wit:

We, B. O'Connor and James Green, justices of the peace in and for the county aforesaid, in the State of New York, do hereby certify that William S. Humphreys, a party to a certain deed bearing date on the seventh day of April, 1853, and hereto annexed, personally appeared before us, in our own county aforesaid, the said William S. Humphreys, being personally known to us as the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under our hands and seals this 10th day of June, 1853.

B. O'CONNOR, *J. P.* [SEAL.]
JAS. GREEN, *J. P.* [SEAL.]

STATE OF NEW YORK,
County of New York, to wit.:

356 We, B. O'Connor and James Green, justices of the peace in and for the county aforesaid, in the State of New York, do hereby certify that Catharine R. Humphreys, the wife of William S. Humphreys, a party to a certain deed, bearing date on the seventh day of April, 1853, and hereunto annexed, personally appeared before us, in our county aforesaid, the said Catharine R. Humphreys, being personally well known to us as the person who executed the said deed, and being by us examined privily and apart from her said husband, and having the deed aforesaid fully explained to her, she, the said Catharine R. Humphreys, acknowledged the said deed to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hands and seals this 10th day of June, 1853.

B. O'CONNOR, *J. P.* [SEAL.]
JAS. GREEN, *J. P.* [SEAL.]

STATE OF NEW YORK,
City and County of New York, ss:

I, Richard B. Connolly, clerk of the city and county of New York, and also clerk of the supreme court for said city and county, do hereby certify that B. O'Connell and James Green, whose names are subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, were, at the time of taking such proof acknowledgment, justices of the peace dwelling in the said city, elected and sworn and duly authorized to take the same; and further, that I am well acquainted with the

handwriting of such justices, and verily believe the signatures to the said certificates of proof or acknowledgment are genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, the 10th day of June, 1853.

RICHARD B. CONNOLLY, *Clerk.*

(Endorsed:) W. S. Humphreys et ux. to J. B. Close. Deed in fee.
357 Rec'd 14th June, 1853, to be recorded, and the same day was recorded in liber J. A. S., No. 57, folios 360, &c., one of the land records for Washington County, in the District of Columbia, and sed'y.

JOHN SMITH, *Clerk.*

This is to certify that the within is a true and verified copy of a deed, as recorded in liber J. A. S., No. 57, folio 360 et seq., one of the land records for the District of Columbia.

[SEAL.] GEO. F. SCHAYER,
Dep. Recorder.

WASHINGTON, D. C., *December* 6, 1878.

EXHIBIT J. B. C., No. 4.—*December* 7, 1878.—W. MUIRHEID, *U. S. C.*

This indenture, made the twenty-second day of June, in the year one thousand eight hundred and fifty-four, between William S. Humphreys and Catherine R. Humphreys, his wife, of the city of New York and State of New York, party of the first part, and Joseph B. Close, of the same place, party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of four thousand eight hundred and twelve dollars and sixty-seven cents, lawful money of the United States, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of second part, his heirs, executors, and administrators, forever released and discharged from the same, by these presents have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all that tract or parcel of land lying and being situate in the county of Washington, in the District of Columbia, called Powell's Dividend, containing, by resurvey, seventy-five and a quarter acres, beginning for the same at a distance marked "A," near the entrance gate of a farm lately owned by Samuel Harrison Smith, and running thence south sixty degrees west seventy-five perches;
358 thence south forty perches; thence north seventy-five degrees west twelve perches; thence south seventeen degrees east eleven perches to a stone numbered twenty; thence south thirty-seven degrees west one hundred perches; thence southeast by east seventy-eight perches; and thence by a straight line to the place of beginning; and of also all that other tract, piece, or parcel lying and being situate in the county and District aforesaid, containing nine acres two roods and thirty-nine perches, beginning for the same at a stake standing on the west side of the road leading from Smith's lane to North Capitol street, and running thence north fifty-eight degrees seventeen minutes west thirty-two and one twenty-fifth perches to stone numbered seventeen; thence north twenty-two degrees

fifteen minutes west sixty-six and one-seventeenth perches to a stone numbered eighteen; thence south fifty-eight degrees seventeen minutes east seventy-five perches to a stake on the west side of the road; and thence with the west side of the road south fifty-six degrees west forty-two and four-fifths perches to the place of beginning, with the exception of a small portion of land on the east side of Powell's Dividend, heretofore conveyed to form part of public road, and being the two tracts or parcels of land now called Shamrock Hill, sold and conveyed to the said William S. Humphreys by Junius F. Boyle and Ann Eliza Boyle, his wife, by indenture bearing date on the second day of April, 1852, and recorded in liber J. A. S., No. 38, folios 138, 139, and 140, one of the land records for the county and District aforesaid, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, dower, right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances; to have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs, and assigns, to his or their own proper use, benefit, and behoof, forever.

And the said William S. Humphreys, for himself, his heirs, exec-
359 utors, and administrators, doth covenant, grant, and agree to and with the said party of the second part, his heirs, and assigns, that the said parties of the first part, at the time of the sealing and delivery of these presents, are lawfully seized, in their own right, of a good, absolute, and indefeasable estate of inheritance, in fee simple, of and in all and singular the above granted and described premises, with the appurtenances, and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner aforesaid. And that the said party of the second part, his heirs, and assigns, shall and may at all times hereafter peaceably and quietly have, hold, use, occupy, possess, and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of said parties of the first part, their heirs, or assigns, or of any other person or persons lawfully claiming or to claim the same. And that the same now are free, clear, discharged, and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and encumbrances of what nature or kind soever.

And also that the said parties of the first part and their heirs, and all and every person or persons whomsoever, lawfully or equitably deriving any estate, right, title, or interest, of, in, or to the hereinbefore granted premises, by, from, under, or in trust for them, shall and will, at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part, his heirs and assigns, make, do, and execute, or cause to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted or so intended to be, in and to the said party of the second part, his heirs and assigns, forever, as by the said party of the second part, his heirs or assigns, or his or their counsel

learned in the law, shall be reasonably advised or required. And the said parties of the first part, their heirs, the above-described and hereby granted and released premises, and every part and parcel thereof with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part, and their heirs, and
360 against all and every person and persons whomsoever lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In witness whereof, the parties to these presents have hereunto, interchangeably, set their hands and seals the day and year first above written.

(Signed) W. S. HUMPHREYS. [SEAL.]
(Signed) C. R. HUMPHREYS. [SEAL.]

Sealed and delivered in presence of—
N. A. CHEDSEY,
SAM'L B. LOGAN.

STATE OF NEW YORK,
City and County of New York, ss:

We, B. O'Connor and Wm. B. Meech, justices of the peace in and for the county of New York, in the State of New York, do hereby certify that William S. Humphreys and Catharine R. Humphreys, his wife, the parties to the within deed, bearing date the 22d day of June, 1854, personally appeared before us, in our county aforesaid, the said William S. Humphreys and Catharine R. Humphreys, his wife, being personally well known to us as the persons who executed the said deed, and acknowledged that they had severally executed the within instrument for the uses and purposes therein mentioned, as their free act and deed. And the said Chatharine R., on a private examination apart from her said husband, and having the deed aforesaid fully explained to her, acknowledged that she executed the said deed freely, and without fear or compulsion, from any one, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hands and seals, this 22d day of June, 1854.

(Signed) B. O'CONNOR, [SEAL.]
Justice of the Peace, N. Y.
(Signed) WM. B. MEECH, [SEAL.]
Justice of the Peace, N. Y.

STATE OF NEW YORK,
City and County of New York, ss:

I, Richard R. Connolly, clerk of the city and county of New
361 York, and also clerk of the supreme court for the said city and county, do hereby certify that B. O'Connor and W. B. Meech, whose names are subscribed to the certificate of the proof or acknowledgement of the annexed instrument, and thereon written, were the time of taking such proof or acknowledgment, justices of the peace, in and for the city and county of New York, duly elected and sworn. And further, that I am well acquainted with the handwriting of such justices, and verily believe that the signatures to the said certificate of proof or acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 22d day of June, 1854.

[SEAL.] (Signed) RICHARD B. CONNOLLY, *Clerk.*

(Endorsed:) William S. Humphreys and Catharine R. Humphreys to Joseph B. Close. Deed. Received 26th Sept., 1854, to be recorded, and the same day was recorded in liber J. A. S., No. 85, folios 266 to 272, one of the land records of Washington County, in the District of Columbia, and examined by Jno. A. Smith, clerk.

N. A. CHEDSEY,
Notary, City Hall Place, New York.

This is to certify that the within is a true and verified copy of a deed as recorded in liber J. A. S., 85, folio 266 et seq., one of the land records for the District of Columbia.

[SEAL.] GEO. F. SCHAYER,
Dep. Recorder.

WASHINGTON, D. C., *December* 6, 1878.

EXHIBIT J. B. C., No. 5.—*December* 7, 1878.—W. MUIRHEID, *U. S. C.*

Deed of trust.—William S. Humphreys to Charles S. Wallach.

This indenture, made this second day of April, in the year of our Lord eighteen hundred and fifty-two, between William S. Humphreys, of the city and State of New York, of the first part, and Charles S. Wallach, of the county of Washington, in the District of Columbia, of the
362 second part, witnesseth: Whereas the said party of the first part is justly indebted unto Junius J. Boyle, of the city of Washington, in the full sum of seven thousand five hundred dollars for part of the purchase-money of the hereinafter-described tracts or parcels of land and premises, with the appurtenances, and for said sum has passed to the said Junius J. Boyle his three several promissory notes, bearing even date with these presents, one for the sum of thirteen hundred and twelve dollars and sixty-seven cents, and for the sum of two thousand dollars, and one for the sum of four thousand one hundred and eighty-seven dollars and thirty-three cents, and payable, respectively, in one, two, and five years after date, with interest, and being desirous to secure the payment of said promissory notes when and as the same shall become due and payable, has agreed to make and execute these presents. Now, therefore, this indenture further witnesseth, that for and in consideration of the premises, and of the sum of five dollars current money of the United States to him in hand paid at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said party of the first part have granted, bargained, and sold, aliened, enfeoffed, and conveyed, and by these presents does grant, bargain, and sell, alien, enfeoff, and convey, unto the said party of the second part, his heirs and assigns, all those two certain tracts or parcels of land lying and being situate in the county of Washington, in the District of Columbia, now called and known by the name of Shamrock Hill, and being the same tracts or parcels of land sold and conveyed to the said party of the first part by the said Junius J.

Boyle and Ann Eliza Boyle, his wife, by indenture, bearing even date with these presents, and in said indenture more particularly by metes and bounds described, together with all and singular the buildings, improvements, rights, privileges, ways, water-courses, hereditaments, and appurtenances to the same belonging or in any manner appertaining; to have and to hold the same tracts or parcels of land and premises, with the appurtenances, unto him the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever. In trust, nevertheless, to, for, and upon the following uses and trusts; that is to say, in trust, that in case the said party of the first *d*art, his executors or administrators, do and shall fail to pay and satisfy
363 said promissory notes, or any or either of them, or any part of them, or any or either of them, when and as the same shall become due and payable, the said party of the second part or his heirs, do and shall, at the request of the said Junius J. Boyle, his executors, administrators, or assigns, sell said tracts or parcels of land and premises, with the appurtenances, after giving at least twenty days' notice in some paper printed and published in the city of Washington, at public sale, and upon such terms as he may deem most advantageous, and convey the same to the purchaser thereof, and out of the proceeds of said sale, after retaining unto himself five per cent. upon the gross amount of said sale for his trouble in executing this trust, pay in the first place all expenses of said sale, and in the next place pay to the said Junius J. Boyle, his executors, administrators, or assigns, the whole amount of *and* promissory notes, or so much thereof as may then remain unpaid, whether the same shall have become due or not, with all interest which may have accrued thereon, and the balance, if any, pay over to the said party of the first part, his executors, administrators, or assigns; but in case the said party of the first part, his executors, or administrators do or shall well and truly, without default, pay and satisfy said promissory notes when and as the same shall become due and payable, the said party of the second part, or his heirs, do and shall at the request and costs of the said party of the first part, his heirs or assigns, make and execute unto him the said party of the second part, his heirs and assigns, a good and sufficient deed of release of said tracts or parcels of land and premises with the appurtenances.

In testimony whereof the said party of the first part has hereunto subscribed his hand and affixed his seal, on the day and year first hereinbefore written.

W. S. HUMPHREYS. [SEAL.]

Signed, sealed, and delivered in presence of—

WM. J. McCORMICK.
H. NAYLOR.

DISTRICT OF COLUMBIA,
Washington County, to wit:

We, William McCormick and Henry Naylor, justices of the peace in and for the county aforesaid, in the District of Columbia, do hereby
364 certify that William S. Humphreys, a party to a certain deed, bearing date on the 2d day of April, 1852, and hereto annexed, per-

sonally appeared before us, in our county aforesaid, the said William S. Humphreys being personally well known to us as the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under our hands and seals this 6th day of April, 1852.

WM. J. McCORMICK, *J. P.* [SEAL.]
H. NAYLOR, *J. P.* [SEAL.]

(Endorsed:) J. A. S., 38, f. 140. Deed of trust, dated April 2d, 1852, from William S. Humphreys to Chas. S. Wallach.

This is to certify that the within is a true and verified copy of a deed as recorded in liber J. A. S., No. 38, folio 140 et seq., one of the land records for the District of Columbia.

GEO. F. SCHAYER,
Dep. Recorder.

WASHINGTON, D. C., *December* 6, 1878.

EXHIBIT J. B. C., No. 6.—*December* 7, 1878.—W. MUIRHEID, *U. S. C.*

This indenture, made this first day of June, in the year eighteen hundred and fifty-seven, by and between Charles S. Wallach, trustee, in the hereinafter in part recited indenture named, of Washington County, in the District of Columbia, of the first part, and William S. Humphreys, of the city and State of New York, of the second part, witnesseth: Whereas party of the second part, by his deed of indenture, duly made and executed, bearing date on or about the 2d day of June, in the year eighteen hundred and fifty-two, did grant and convey to the said party of the first part, and to his heirs and assigns, all those two certain tracts or parcels of land, lying and being situate in the county of Washington, in the District of Columbia, then called and known by the name of Shamrock Hill, and in said hereinbefore in part recited indenture mentioned and described premises with the appurtenances, in trust for the purposes therein mentioned, as by reference to said deed of
365 indenture, duly recorded in the land records for the county and District aforesaid, in liber J. A. S., No. 38, folios 140, 141, and 142, will more fully and at large appear. And whereas the said debt, with the interests and costs, have been fully paid and discharged to the said Junius J. Boyle, in said indenture named, or his assigns, and the purposes for which said trust was created have therefore ceased and determined, the said party of the second part is entitled in law to a reconveyance of the premises free and discharged of and from the said trusts, as aforesaid, and as fully as if said deed had not been made. Now, this indenture witnesseth, that for and in consideration of the premises, and of the further sum of one dollar to him, the said party of the first part in hand paid by the said party of the second part, at and before the unsealing and delivery of these presents, the receipt whereof is hereby acknowledged, he, the said party of the first part, has granted, bargained, sold, conveyed, released, and assigned, and by these presents does grant, bargain, sell, convey, release, and assign all and singular the aforementioned premises, with the appurtenances, and every part and parcel thereof, as fully and entirely as the same now are, in law or equity, vested and standing in the said party of the first part, by or

under the said in part recited deed, unto him, the party of the second part, his heirs and assigns forever, to have and to hold the same, and every part and parcel thereof, with the appurtenances, unto him, the said party of the second part, his heirs and assigns forever, to his and their only proper use, benefit, and behoof forever, free, clear, and forever discharged of and from all and every right, title, interest, and now existing in said party of the first part by or under the said conveyance as aforesaid.

In witness whereof the said party of the part has hereunto set hand and seal, the day and year first above written.

CHAS. S. WALLACH, *Trustee.* [SEAL.]

Signed, sealed, and delivered in the presence of—
L. K. OFFUTT.
H. C. SPAULDING.

DISTRICT OF COLUMBIA,
County of Washington:

Be it known that on this first day of June, in the year of our Lord
366 one thousand eight hundred and fifty-seven, before the subscribers, two justices of the peace in and for the county and District aforesaid, in our county aforesaid, personally appears Chas. S. Wallach, trustee, the party grantor of the within instrument, who, being personally known to us, acknowledges the same to be his act and deed.

Given under our hands and seals this first day of June, 1857.

L. K. OFFUTT, *J. P.* [SEAL.]
H. C. SPAULDING, *J. P.* [SEAL.]

(Endorsed:) Chas. S. Wallach, trustee, to Wm. S. Humphreys; deed released.

Received 16th September, 1858, to be recorded, and the same day was recorded in liber J. A. S., No. 161, folios 11, 12, and 13, one of the land records for Washington County, in the District of Columbia, and examined by—

JNO. A. SMITH, *Clerk.*

This is to certify that the within is a true and verified copy of a deed, as recorded in liber J. A. S., No. 161, folio 11 et seq., one of the land records for the District of Columbia.

GEO. F. SCHAYER,
Dep. Recorder.

WASHINGTON, D. C., *December* 6, 1878.

EXHIBIT J. B. C., No. 7.—*Dec.* 7, 1878.—W. MUIRHEID, *U. S. C.*

STATE OF NEW YORK,
City and County of New York:

This is to certify that I, Wm. S. Humphreys, of the city of New York, hereby acknowledge full satisfaction of Joseph B. Close for all my right, title, and interest secured to me by an agreement made on the 22d day of June, 1854, and hereby waive all rights which I have heretofore had under the same, he having satisfied me in full.

W. S. HUMPHREYS. [SEAL.]

Witness:
N. A. CHEDSEY.

367 STATE OF NEW YORK,
City and County of New York, ss:

On this 24th day of September, 1859, personally appeared before me Wm. S. Humphreys, to me known to be the same person described in and who executed the aforegoing paper, and acknowledged that he executed the same for the uses and purposes therein mentioned.

EDMUND J. PELLET,
Notary Public.

EXHIBIT W. M., 1.—*Dec.* 7, 1878.—W. MUIRHEID, *U. S. Com'r.*

BAYONNE CITY, N. J.

DEAR SIR: Your name is on a petition to change the management of Glenwood Cemetery. Not having received a complaint from any lot holder since it was established, over twenty years ago, I am anxious to know your grievances, and if you will please to send a statement of them, and especially the payments you have made, the date, amount, and what for, you will conver a favor on

Your ob't servant,

J. B. CLOSE, *President.*

EXHIBIT W. M., 2.—*December* 7, 1878.—W. MUIRHEID, *U. S. C.*

(Copy.—Liber 894, folio 224.)

Mortgage.—Recorded August 23d, 1878, 9 *a. m.*

Joseph B. Close to Abraham Winfield.

This indenture made the seventeenth day of August, in the year one thousand eight hundred and seventy-eight, between Joseph B. Close, of the city of Bayonne, in the county of Hudson, and State of New Jersey, party of the first part, and Abraham Winfield, of Jersey City, in the county and State aforesaid, party of the second part. Whereas the said Joseph B. Close is justly indebted to the said party of the second part in the sum of twenty-five thousand dollars, lawful money of the United States
368 of America, secured to be paid by his certain bond or obligation, bearing even date with these presents, in the penal sum of fifty thousand dollars, lawful money as aforesaid, conditioned for the payment of the said first mentioned sum of twenty-five thousand dollars, lawful money as aforesaid, to the said party of the second part, his executors, administrators, or assigns, on the first day of January, which will be in the year one thousand eight hundred and seventy-nine, and interest thereon, to be computed from the date thereof at and after the rate of six per cent., and to be paid half-yearly. Now this indenture witnesseth that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to him in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these pres-

ents does grant, bargain, sell, alien, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all that tract or parcel of land lying and being situate in the county of Washington, in the District of Columbia, called Powell's Dividend, containing, by resurvey, seventy-five and a quarter acres, beginning for the same at a distance marked "A," near the entrance gate of a farm lately owned by Newell Harrison Smith, and running thence six degrees west seventy-five perches, thence south forty perches, thence north seventy-five degrees west twelve perches, thence south seventeen degrees east eleven perches to a stone numbered twenty, thence south thirty-seven degrees west one hundred perches, thence south twenty degrees east seventeen perches, thence southeast by east seventy-eight perches, and thence by a straight line to the place of beginning, and of also all that other tract, piece, or parcel of land lying and being situate in the county and District aforesaid, containing nine acres, two roods, and thirty-nine perches, beginning for same at a stake standing on the west side of the road, leading from Smith's Lane to North Capitol street, and running thence north fifty-eight degrees seventeen minutes west thirty-two and one twenty-fifth perches, to a stone numbered seventeen, thence
north twenty-two degrees and fifteen minutes west sixty-six and one-
369 seventeenth perches to a stone numbered eighteen, thence south fifty-eight degrees seventeen minutes east seventy-five perches to a stake on the west side of the road, and thence with the west side of the road south fifty-six degrees west forty-two and four-fifth perches to the place of beginning, with the exception of a small portion of land on the east side of Powell's Dividend, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, dower, right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity of the said party of the first part of, in, and to the same, and every part and parcel thereof, with the appurtenances. To have and to hold the above granted and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof, forever; provided always, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors, or administrators, shall well and truly pay unto the said party of the second part, his executors or administrators or assigns, the said sum of money mentioned in the condition of said bond or obligation, and the interest thereon, at the time and times and in the manner mentioned in the said condition according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine, and be void. And the said Joseph B. Close, for himself, his heirs, executors, and administrators, doth covenant and agree to pay unto the said party of the second part, his executors, administrators, or assigns, the said sum of money and interest as mentioned above and expressed in the conditions of the said bond. This mortgage and the bond it is intended to secure are given upon the following trusts and conditions: First, as collateral security to ascertain judgment which Charles H. Winfield, lately in the supreme court of the State of New Jersey, recovered against said party of the first part, now with the interest thereon amounting to fifteen thousand six hundred and sixteen dollars and seventy-two cents. Second, as collateral se-

curity to a certain judgment which said Abraham Winfield lately, in the same court, recovered against said Close, now with interest amount-
370 ing to twenty-eight hundred and seventy-three dollars and sixty-one cents. Third, to secure the further indebtedness to Charles H. Winfield of one thousand one hundred and eleven dollars and eighty-one cents; and to Abraham Winfield the further sum of three hundred and eighty dollars and forty-one cents. Fourth, to pay Nathaniel Wilson his reasonable costs, charges, and expenses, for conducting and managing the law matters and legal controversies of said Joseph B. Close, in the District of Columbia, whether past or to come.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

JOS. B. CLOSE. [SEAL.]

Sealed and delivered in the presence of—
CHAS. H. HARTSHORNE.

STATE OF NEW JERSEY,
Hudson County, ss:

Be it remembered that on this seventeenth day of August, in the year one thousand eight hundred and seventy-eight, before me, Charles H. Hartshorne, master in chancery of New Jersey, personally appeared Joseph B. Close, who, I am satisfied, is the grantor in the within indenture of mortgage named, and who executed the same; and I having first made known to him the contents thereof, he did, thereupon, acknowledge that he signed, sealed, and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed. And the said Charles H. Hartshorne, M. C. C. of New Jersey.

STATE OF NEW JERSEY,
Hudson County, ss:

I, James M. Brann, clerk of the county of Hudson, and also clerk of the circuit court and court of common pleas holden therein, do hereby certify that Charles H. Hartshorne, before whom the foregoing acknowledgement was taken, was a' the date thereof a master in chancery in and for said county and State, commissioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such master, and verily believe the signature purporting to be his is genuine. In witness whereof I have hereunto set my hand and
371 affixed the seal of said courts and county, this 17th day of August, A. D. 1878.

JAMES M. BRANN, *Clerk.* [COURT SEAL.]

(Endorsed:) Joseph B. Close to Abraham Winfield. Copy of mortgage.

This is to certify that the within is a true and verified copy of a deed, as recorded in Liber No. 894, folio 224 et seq., one of the land records for the District of Columbia.

GEO. F. SCHAYER,
Dep. Recorder.

WASHINGTON, D. C., *September* 26, 1878.

In the supreme court of the District of Columbia.

THE GLENWOOD CEMETERY CO.
vs.
J. B. CLOSE ET AL. } In equity.

DISTRICT OF NEW JERSEY, *ss:*

I, William Muirheid, a commissioner duly appointed by the circuit court of the United States for the district of New Jersey, in the third circuit, do hereby certify that on the seventh day of December, A. D. one thousand eight hundred and seventy-eight, I was attended at my office, at No. 1 Montgomery street, Jersey City, New Jersey, by Charles H. Winfield, esq., counsel for Joseph B. Close, and by Th. Jessup Miller, counsel for the complainants, and by the witness, Joseph B. Close, who was of sound mind and lawful age, and said witness was by me carefully and duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth. And the deposition of the said witness was reduced to writing from his statements, and the witness subscribed the same in my presence.

And I do further certify that I am not of counsel nor attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in the said caption, and in the commission under which this deposition is taken.

In witness whereof I have hereunto set my hand and official seal,
372 at Jersey City, in said district, this seventh day of December, in the year one thousand eight hundred and seventy-eight.

W. MUIRHEID,
U. S. Com'r Dist. of N. J.

In the supreme court of the District of Columbia. 16th day of December, 1878.

GLENWOOD CEMETERY
vs.
JOSEPH B. CLOSE ET AL. } No. 5877, Equity. Docket 17.

The President of the United States to John J. Lynes, at New York *York* City, greeting:

Know ye that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you, or any two of you, are invested with power and authority to examine William Phelps and William Banks as witnesses for the defendants, in the above-entitled cause, upon the interrogatories annexed to this commission; and, therefore, you are hereby commanded, at a certain day and place, or certain days and places to be appointed by you, to cause said witnesses to come before you, and then and there examine them, on oath and affirmation, upon the said interrogatories, and reduce their testimony into writing, to be signed by said witnesses; and, having so done, annex the same to this writ, closed up under your seals, and make return thereof into said court with all convenient speed.

Witness, D. K. Cartter, chief justice.

[SEAL.]

R. J. MEIGS, *Clerk.*
By R. J. MEIGS, JR., *Ass't.*

In the supreme court of the District of Columbia.

THE GLENWOOD CEMETERY CO.
vs.
J. B. CLOSE ET AL. } In equity. No.

373 *Interrogatories to be propounded to William Banks and William Phelps, of the city of New York, witnesses, called and examined on behalf of the defendants.*

1. State your name, age, residence and occupation.
2. Where did you reside, and in what business were you engaged, during the years 1853 and 1854?
3. Were you at that time acquainted with William S. Humphreys, who is named as one of the defendants in the above-entitled case, and if so, is said Humphreys now living; and if not, when and where did he die?
4. If you say you were acquainted with the said William S. Humphreys in 1843, state the nature of your relations with him?
5. Please refer to the act of Congress entitled "An act to incorporate the proprietors of Glenwood Cemetery," to be found in the 10th volume of the Statutes at Large, page 789, and state whether you ever authorized the use of your name as one of the corporators in said act.
6. Did you ever at any time make or offer an application to either house of Congress, or to any member thereof, for the passage of said act of Congress approved July 27th, 1854, entitled "An act to incorporate the proprietors of Glenwood Cemetery?"
7. Did you ever aid or assist in any way whatever in procuring the passage of said act of Congress of July 27, 1854?
8. Did you at any time agree with the persons named in the first section of said act of Congress of July 27, 1854, to form a company or association to establish and maintain a cemetery in the District of Columbia?
9. Was any action or proceeding, to the best of your knowledge, information, and belief, taken by the persons named as corporators in the first section of said act of Congress of July 27, 1854, after the passage of said act, to accept the charter granted by said act?
10. Do you know of any meeting ever having been held by the persons named as corporators in said act of Congress of July 27, 1854, for the purpose of accepting said charter, and for the purpose of organizing thereunder?
11. Did you ever meet with said corporators, or any of them, after the passage of said act of Congress for the purpose of accepting said charter or organizing under said act?

374 12. After the passage of said act of Congress had you any conference or conversation with said Humphreys, or any of the persons named in the first section of said act of Congress with reference to the acceptance of the charter granted by said act, or with reference to an organization under said act?

13. Do you know, or have you ever heard of the existence of any records, books, or minutes showing, or purporting to show, the proceedings of the persons named in said act of Congress, or any of them, with reference to an organization under said charter?

14. The four last named persons in the first section of said act of Congress are Joseph B. Close, William Phelps, William S. Humphreys, and Randolph G. Evans; did you ever meet with said persons, or any of them, after the passage of said act for the purpose of accepting the charter granted by said act, or organizing under said act?

15. Did the four persons named in the last preceeding interrogatory ever meet together or organize themselves as a board of managers under said act of Congress of July 27, 1854?

16. Do you know, or have you ever heard of the existence of any records, books, or minutes, showing or purporting to show any acts or proceedings of the said four last named persons in the first section of said act, in the capacity of managers of the corporation authorized by said act.

17. Was any election ever held under said act of Congress for president and managers of said corporation?

18. Were any by-laws, rules, or regulations for the conduct of said corporation, made or prescribed by said four last named persons in the first section of said act of Congress, after the passage of said act?

19. Did you ever exercise, or claim to exercise, any power, authority, or control in the management of said cemetery, or participate, or claim the right to participate, directly or indirectly, in the management of said cemetery?

20. Do you know, or have you ever heard, of the persons named in said act of Congress, or any of them, excepting said Humphreys and Close, exercising, or claiming the right to exercise, the control or management of said cemetery?

21. Do you know, or have you ever heard, of the issue of any stock, or certificates of stock, in respect of said cemetery, and under the provisions of said act of Congress?

375 22. Has there ever been issued to you, or have you ever held, or has any one ever held for you, any stock, or certificate of stock, in respect of said cemetery?

ASHTON & WILSON,
Solicitors for Defendants.

(Endorsed:) In equity. No. 5877. The Glenwood Cemetery Co. vs. Jos. B. Close. Interrogatories to Wm. Phelps and Wm. Banks. Filed October 24, 1878. R. J. Meigs, clerk.

In the supreme court of the District of Columbia.

GLENWOOD CEMETERY *vs.* CLOSE ET AL. } In equity.

Cross-interrogatories to be propounded to William Banks and William Phelps, witnesses called for the defendant Close.

1st. Did you know Wm. S. Humphreys and Joseph B. Close, or either of them, in 1854 and 1855, and were you on friendly or social terms with them, or either of them, about that time?

2d. Did you know, or were you informed of the fact, that Wm. S. Humphreys had engaged in the business of starting a cemetery in the District of Columbia about the time mentioned?

3d. If so, did you know, or were you informed, that Joseph B. Close was interested in any way in the cemetery?

4th. Did you know that the cemetery was incorporated; if so, did you refuse or object to the use of your name as an incorporator?

5th. Were you requested or was it suggested to you to allow your name to be used either as an incorporator or as a manager or director; and, if so, did you object to it?

6th. Were you willing that your name should be used as a corporator, and that the other corporators should manage the cemetery?

376 7th. Did Joseph B. Close or Wm. S. Humphreys suggest to you then, or at any other time, that your name was used, or was about to be used, in connection with the cemetery?

8th. Was anything said to you, or in your presence, as to the incorporation of the cemetery?

9th. Did you, in any way whatever, dissent from the passing the "Act to incorporate the proprietors of the Glenwood Cemetery?"

10th. Were you willing, after the passage of the said act, that Close and Humphreys, or the other corporators, should manage the affairs of the corporation?

11th. Do you know of any action by the corporators named, or any of them, to refuse the charter granted by Congress?

12th. Did you know of a pamphlet, several thousand copies of which have been distributed, containing the dedicatory services of the cemetery, with copy of the act of incorporation and list of the officers?

13th. How long have you known that you have been largely advertised as one of the "managers" of the "Glenwood Cemetery," of which corporation Joseph B. Close has been advertised as "President?"

14th. Have you ever done anything to stop the circulation of this pamphlet, or to deny that you have been one of the "managers" of Glenwood Cemetery? If yea, state what you have done.

TH. JESSUP MILLER,
J. W. BARTLEY,
Solicitors.

Filed Nov. 27, 1878.

R. J. MEIGS, *Clerk.*

In the supreme court of the District of Columbia.

THE GLENWOOD CEMETERY COMPANY *ag'st* JOSEPH B. CLOSE. } No. 5877. Equity docket 17.

Deposition of William Banks.

The deposition of William Banks, a witness on the part of the said defendant, taken by and before the undersigned, John J. Lynes, the commissioner named in the annexed commission, issued out of and

377 under the seal of the aforesaid supreme court of the District of Columbia, at his office, in the city and county of New York, in the State of New York, on the twenty-third day of December, 1878, between the hours of ten a. m. and twelve m., upon the annexed interrogatories and cross-interrogatories.

To the first interrogatory he saith: My name is William Banks; my

age is sixty-six; I reside at 147 East 34th street, in the city of New York, and my occupation is manufacturing boys' clothing.

To the second interrogatory he saith: In the years 1853 and 1854, I think, to the best of my knowledge, I resided in the city of New York, and was in the upholstery business.

To the third interrogatory he saith: I was acquainted with William S. Humphreys. I don't know whether said Humphres is living or not; to the best of my knowledge he is dead. I have been informed and believe he is dead.

To the fourth interrogatory he said: The said William S. Humphreys was in the furniture business, and my relations with him consisted in selling him feathers, hair, and straw mattresses, and things in that line.

To the fifth interrogatory he saith: I never authorized the use of my name as one of the incorporators of the Glenwood Cemetery, incorporated under an act of Congress in the year 1854, and had nothing to do with it whatever.

To the sixth interrogatory he saith: No; I never authorized the use of my name; never was asked.

To the seventh interrogatory he saith: No.

To the eighth interrogatory he saith: No.

To the ninth interrogatory he saith: Not to my knowledge.

To the tenth interrogatory he saith: No.

To the eleventh interrogatory he saith: No.

To the twelfth interrogatory he saith: Not to my knowledge.

To the thirteenth interrogatory he saith: Not to my knowledge.

To the fourteenth interrogatory he saith: No.

To the fifteenth interrogatory he saith: No; I have no knowledge of there ever being any such meeting.

To the sixteenth interrogatory he saith: No.

To the seventeenth interrogatory he saith: Not to my knowledge.

378 To the eighteenth interrogatory he saith: Not to my knowledge.

To the nineteenth interrogatory he saith: No; I never did either.

To the twentieth interrogatory he saith: No.

To the twenty-first interrogatory he saith: No.

To the twenty-second interrogatory he saith: No.

To the first cross-interrogatory he saith: I knew them and was on friendly terms with them about the years 1854 and 1855.

To the second cross-interrogatory he saith: I heard him say so.

To the third cross-interrogatory he saith: Yes; Humphreys and Close both told me that they were interested in a cemetery about that time.

To the fourth cross-interrogatory he saith: I was informed that a cemetery was incorporated. I did not refuse or object to the use of my name as an incorporator, for the reason that I was never asked to become one.

To the fifth cross-interrogatory he saith: I was never asked to become an incorporator, a manager, or director, or in any manner to be connected with it.

To the sixth cross-interrogatory he saith: No; I never was asked to become an incorporator. Never was asked for the use of my name.

To the seventh cross-interrogatory he saith: No.

To the eight' cross-interrogatory he saith: I might have heard of the

incorporation of the cemetery at that time, but not with my name being used as an incorporator.

To the ninth cross-interrogatory he saith: No; I never dissented, for the reason that I never knew that my name was being used until afterwards.

To the tenth cross-interrogatory he saith: Close and Humphryes stated to me that they were the only persons interested in the corporation, and I had nothing to do with regard to the management of the affairs of the corporation.

To the eleventh cross-interrogatory he saith: No.

To the twelfth cross-interrogatory he saith: I think I did; I am pretty sure I did.

To the thirteenth cross-interrogatory he saith: I never knew that I was largely advertised, or advertised at all, as one of the managers of
379 the Glenwood Cemetery, except knowing that my name was inserted in the act of incorporation of July 27, 1854.

To the fourteenth cross-interrogatory he saith: I have done nothing to stop the circulation of any pamphlet whatever; I never was a manager of the cemetery, and therefore had nothing to do with regard to stopping or issuing any pamphlet.

WILLIAM BANKS.

Subscribed and sworn to before me this 23d day of December, 1878.

JOHN J. LYNES,
Commissioner.

In the supreme court of the District of Columbia.

THE GLENWOOD CEMETERY COMPANY *agst.* JOSEPH B. CLOSE. } No. 5877. Equity. Docket 17.

Deposition of William Phelps.

The deposition of William Phelps, a witness on the part of the said defendant, taken by and before the undersigned, John J. Lynes, the commissioner named in the annexed commission, issued out of and under the seal of the aforesaid supreme court of the District of Columbia, at his office in the city and county of New York, in the State of New York, on the twenty-sixth day of December, 1878, between the hours of seven and nine p. m. upon the annexed interrogatories and cross-interrogatories.

To the first interrogatory he saith: My name is William Phelps; my age is sixty-four; I reside at No. 17 East 127th street, in the city of New York; I am in no business at present; I was until quite recently in the furniture business.

To the second interrogatory he saith: To the best of my recollection I resided, in the years 1853 and 1854, corner of Pike and Henry streets in the city of New York, and was in those years engaged in the furniture business.

To the third interrogatory he saith: I was acquainted with William S. Humphreys, named as one of the defendants; I understand that he is now dead; I have not seen him for several years; I was informed by his,

380 son within the past two years that the said Humphreys died in 33d street in this city.

To the fourth interrogatory he saith: Late firm of Phelps & Kingman; was in the habit of selling him furniture.

To the fifth interrogatory he saith: I have not the slightest recollection of ever authorizing the use of my name as one of the corporators named in said act.

To the sixth interrogatory he saith: I have no recollection of ever doing so. To the best of my recollection, I did not.

To the seventh interrogatory he saith: No, sir.

To the eighth interrogatory he saith: No, sir.

To the ninth interrogatory he saith: No, sir.

To the tenth interrogatory he saith: No, sir.

To the eleventh interrogatory he saith: No, sir.

To the twelfth interrogatory he saith: No, sir.

To the thirteenth interrogatory he saith: No, sir.

To the fourteenth interrogatory he saith: No, sir.

To the fifteenth interrogatory he saith: No, sir; not to my knowledge; I know that I never met with the others named for that or any other purpose.

To the sixteenth interrogatory he saith: No, sir.

To the seventeenth interrogatory he saith: Not to my knowledge.

To the eighteenth interrogatory he saith: Not to my knowledge.

To the nineteenth interrogatory he saith: No, sir.

To the twentieth interrogatory he saith: No, sir.

To the twenty-first interrogatory he saith: No, sir.

To the twenty-second interrogatory he saith: No, sir.

WILLIAM PHELPS.

Subscribed and sworn to before me this 26th day of December, 1878.

JOHN J. LYNES,
Commissioner.

To the first cross-interrogatory he saith: I knew them both in the years in 1854 and 1855; were on friendly terms with them.

To the second cross-interrogatory he saith: I heard him say so.

381 To the third cross-interrogatory he saith: I was informed that Mr. Close rendered him pecuniary assistance in prosecuting the enterprise.

To the fourth cross-interrogatory he saith: I did not know anything about it, to the best of my knowledge. I did not refuse or object to the use of my name from the fact that I have no knowledge of ever having been asked for the use of my name, as an incorporator or otherwise.

To the fifth cross-interrogatory he saith: I have no recollection that I was ever requested, or that it was suggested to me to allow my name to be used, either as an incorporator, manager, or director.

To the sixth cross-interrogatory he saith: No, sir.

To the seventh cross-interrogatory he saith: No recollection of anything of the kind.

To the eighth cross-interrogatory he saith: No, sir; not to my recollection.

To the ninth cross-interrogatory he saith: I never knew that such an act was passed. At least I have no recollection at this time of it.

To the tenth cross-interrogatory he saith: Having no knowledge of the act having been passed, I could give no directions as to the management of the affairs of the corporation.

To the eleventh cross-interrogatory he saith: No, sir.

To the twelfth cross-interrogatory he saith: Have no recollection of it.

To the thirteenth cross-interrogatory he saith: I did not know that I was ever advertised as one of the managers of the Glenwood Cemetery.

To the fourteenth cross-interrogatory he saith: I did not know of such a pamphlet being in circulation, and to the best of my recollection never heard of such a pamphlet being in circulation.

WILLIAM PHELPS.

Subscribed and sworn to before me this 26th day of December, 1878.

JOHN J. LYNES,
Commissioner.

382 I, John J. Lynes, the commissioner named in the annexed and foregoing commission, do hereby certify and return to the supreme court of the District of Columbia that I duly received the said commission; that I attended upon the execution of the commission.

That the said witnesses, William Banks and William Phelps severally appeared before me, the said Banks on the twenty-third day of December, 1878, and the said Phelps on the twenty-sixth day of December, 1878, and each of them being by me first cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in relation to the matters in difference in said action, and in answer to the direct and cross-interrogatories to him addressed; that I then propounded to each of said witnesses consecutively each interrogatory and cross-interrogatory annexed to said commission and herewith returned, and in the same order caused the same to be taken down by a stenographer, and subsequently reduced to writing, and the same being concluded, I read to each witness the several answers so made by him and written, and each of said witnesses thereupon subscribed his name in my presence, and that I have subscribed my name to each page of said deposition.

In witness whereof I have hereunto set my name and affixed my seal at the city, county, and State of New York, the twenty-seventh day of December, 1878.

[SEAL.]

JOHN J. LYNES,
Commissioner.

In the supreme court of the District of Columbia.

GLENWOOD CEMETERY
vs.
JOSEPH B. CLOSE ET AL. } No. 5877. In equity.

This cause coming on to be heard at this term of the court upon the pleadings, proofs, and other proceedings hereinbefore had, was argued by counsel, and submitted to the court; whereupon and upon consideration thereof it is ordered, adjudged, and decreed, this day of March,

1879, that the defendant Joseph B. Close, within thirty days from the date of this decree, make and deliver unto the said complainant, the Glenwood Cemetery, a deed in fee simple of the parcel of real estate mentioned and described in the pleadings and proceedings in this case as the thirty
383 acres actually enclosed and devoted to and used for the cemetery proper, and no more, and that in default of such conveyance within the time specified this decree shall stand in lieu of such conveyance, and shall pass the title of the defendant Joseph B. Close in and to the said thirty acres of land actually enclosed and devoted to and used for the cemetery proper, and that in respect of the sixty acres described in the pleadings and proceedings as not heretofore used for cemetery purposes, the relief prayed for in the bill is hereby denied.

And it appearing to the court that since the institution of this suit the said Frederick N. Close has reconveyed to the said Joseph B. Close the pieces or parcels of land described in said proceedings, it is ordered, adjudged, and decreed that the said bill be, and is hereby dismissed as to the said Frederick N. Close, and as to the defendant R. S. Evans.

And it appearing to the satisfaction of the court that no capital stock was ever issued as provided in section 3 of the original charter of said corporation, and the court being of the opinion that the provision of the sixth section of the act of Congress amending the act incorporating the proprietors of Glenwood Cemetery, approved July 27th, 1854, whereby it is provided that from the receipts from the sale of lots hereafter sold of the grounds now dedicated for burial purposes, there shall be paid, on the first Monday in June in each year, by the board of trustees, to the original proprietors one-fourth of the gross receipts arising from such sales, was designed to be instead and in lieu of said provision in section 3 of said original charter for the issue of capital stock, doth further order, adjudge, and decree that the said Joseph B. Close is the party entitled to said one-fourth of said gross receipts under said phrase "to the original proprietors" in said sixth section of said amendatory act, but without prejudice to and saving and excepting herefrom the rights and interests, if any, of Charles Borcherling as receiver and Ellen M. Close, the wife of said Joseph B. Close, to said one-fourth of said gross receipts.

That the defendants Joseph B. Close and George Clendenin do, within thirty days from the date of this decree, turn over and deliver to the plaintiff or its authorized agent all books, papers, plats, records of conveyance and ownership of lots, personal property and effects used in connection with and relating to the business of said cemetery.

384 That said defendants, Joseph B. Close and George Clendenin, be, and they are hereby, perpetually enjoined and restrained from interfering with or obstructing the plaintiff in any way in the management and control of said cemetery and said cemetery grounds.

That this cause be, and the same is hereby, referred to Eugene Carusi, esq., as special auditor of the court, to ascertain and report the receipts and expenditures by said Clendenin from or by reason of his control of said cemetery property since March 17, 1877, subject to the further order of this court.

That the said Joseph B. Close pay the costs of this cause.

From this decree the defendant Joseph B. Close prays an appeal to the court in general term, which appeal is allowed upon the said defendants

filing a bond in the penal sum of one thousand dollars, with surety to be approved by the clerk of the court; and it is further ordered that upon the defendants delivering over to the complainant the personal property described within thirty days from this date, the penalty of such bond may be reduced to five hundred dollars.

From this decree the defendant Borcherling, receiver, &c., also prays an appeal, which is allowed upon his filing a bond, with surety to be approved by the clerk of the court, in the penal sum of $50.

385 *Stipulation as to exhibit with Close's testimony.*

In the supreme court of the District of Columbia.

It is hereby stipulated and agreed that the copy of the deed filed with the testimony of J. B. Close, and marked Exhibit No. 1, shall be taken as a true copy, and upon the hearing of the cause may be read and considered in evidence as if due proof had been made of the execution of the original without other evidence than this stipulation; the defendants nevertheless reserving their exception to the admis'ibility in evidence of said deed by reason of irrelevancy, impertinence, and incompetence.

It is further stipulated that the copies of five deeds which have been attached as exhibits to the deposition of Joseph B. Close, and marked respectively J. B. C., No. 1; J. B. C., No. 3; J. B. C., No. 4; J. B. C., No. 5; and J. B. C., No. 6, shall be taken as true copies, and may be read and used on the hearing hereof as if due proof had been made of the execution of the originals without other evidence than this stipulation, the complainant nevertheless reserving its exception to the admis'ibility
386 of said deeds by reason of incompetency, irrelevancy, and impertinence.

JESUP MILLER,
Of Counsel for Compl't.
NATH'L WILSON,
Sol'r for Def't Close.

387 *Decree.—At special term, March* 29, 1870.

In the supreme court of the District of Columbia.

GLENWOOD CEMETERY
vs.
JOSEPH B. CLOSE ET AL. } In equity. No. 5877.

This cause coming on to be heard at this term of the court upon the pleadings hereinbefore had, was argued by counsel and submitted to the court, whereupon and upon consideration thereof it is ordered, adjudged, and decreed this 29th day of March, 1879, that the defendant Joseph B. Close, within thirty days from the date of this decree, make and deliver unto the complainant, the Glenwood Cemetery, a deed in fee simple of the parcel of real estate mentioned and described in the pleadings and proceedings in this case as the thirty acres actually enclosed and devoted to and used for the cemetery proper and no more, and that in default of such conveyance within the time specified this decree shall stand in lieu of

388 such conveyance, and shall pass the title of the defendant Joseph B. Close in and to the said thirty acres of land actually enclosed and devoted to and used for the cemetery proper, and that, in respect of the sixty acres described in the pleadings and proceedings as not heretofore used for cemetery purposes, the relief prayed for in the bill is hereby denied.

And it appearing to the court that since the institution of this suit the said Frederick N. Close has reconveyed to the said Joseph B. Close the pieces or parcels of land described in said proceedings, it is ordered, adjudged, and decreed that the said bill be, and is hereby, dismissed as to the said Frederick N. Close and as to the defendant R. S. Evans.

And it appearing to the satisfaction of the court that no capital stock was ever issued as provided in section 3 of the original charter of said corporation, and the court being of the opinion that the provision of

389 the sixth section of the act of Congress amending the act incorporating the proprietors of Glenwood Cemetery, approved July 27th, 1854, whereby it is provided that from the receipts from the sale of lots hereafter sold of the grounds now dedicated for burial purposes, there shall be paid, on the first Monday in June in each year, by the board of trustees, to the original proprietors one-fourth of the gross receipts arising from such sales, was designed to be instead and in lieu of said provision in section 3 of said original charter for the issue of capital stock, doth further order, adjudge, and decree that the said Joseph B. Close is the party entitled to said one-fourth of said gross receipts under said phrase "to the original proprietors," in said sixth section of said amendatory act, but without prejudice to and saving and excepting herefrom the rights and interest, if any, of Charles Borcherling as receiver and Ellen M. Close to said one-fourth of said gross receipts.

390 That the defendants Joseph B. Close and George Clendenin do, within thirty days from the date of this decree, turn over and deliver to the plaintiff or its authorized agent, all books, papers, plats, records of conveyances and of the ownership of lots, personal property and effects used in connection with and relating to the business of said cemetery.

That said defendants, Joseph B. Close and George Clendenin, be and they are hereby, perpetually enjoined and restrained from interfering with or obstructing the plaintiff in any way in the management and control of said cemetery and said cemetery grounds.

That this cause be, and the same is hereby, referred to Eugene Carousi, esq., as special auditor of the court to ascertain and report the receipts and expenditures by said Clendenin from or by reason of his control of said cemetery property since March 17th, 1877, subject to the further order of this court.

391 That the said Joseph B. Close pay the costs of this cause.

From this decree the defendant Joseph B. Close prays an appeal to the court in general term, which appeal is allowed upon the said defendant's filing a bond in the penal sum of one thousand dollars, with surety to be approved by the clerk of the court; and it is further ordered, that upon the defendant's delivering over to the complainant the personal property described within thirty days from this date, the penalty of such bond may be reduced to five hundred dollars.

From this decree the defendant Borcherling, receiver, &c., also prays an

appeal, which is allowed upon his filing a bond, with surety to be approved by the clerk of the court, in the penal sum of $50.

By the court:

MACARTHUR, *Justice.*

392 *Undertaking in appeal to gen. term, April* 17, 1879.

In the supreme court of the District of Columbia, the day of , 187 .

THE GLENWOOD CEMETERY *vs.* JOSEPH B. CLOSE, GEORGE CLENDENIN, ET AL. } At law. No. . In error.

Know all men by these presents that we, Joseph B. Close and Nathaniel Wilson, are bound unto the above named Glenwood Cemetery in the sum of one thousand dollars, to be paid to the said Glenwood Cemetery, its and assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 17th day of April, 1879.

Whereas the above named Joseph B. Close and George Clen-
393 denin have taken an appeal to the general term of the supreme court of the District of Columbia to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia at a special term in equity on the 29th day of March, 1879:

Now, therefore, the condition of this obligation is, that if the above-named Joseph B. Close and George Clendenin shall prosecute their said appeal to effect, and answer all damages and costs if he shall fail to make good their plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

JOSEPH B. CLOSE. [SEAL.]
NATHANIEL WILSON. [SEAL.]

Sealed and delivered in presence of—
B. ZEVELY as to N. Wilson.

1879, April 17. Approved.

R. J. MEIGS, *Clerk, &c.,*
By R. J. MEIGS, JR., *Ass't Clk.*

394 [Washington Law Reporter.]

Supreme court District of Columbia.

Opinion by Cox, Justice.

GLENWOOD CEMETERY.

THE GLENWOOD CEMETERY, *v.* JOSEPH B. CLOSE, WM. S. HUMPHREYS, FREDERICK N. Close, and R. S. Evans and George Clendenin.

Four individuals entered into an agreement to establish a cemetery near Washington, and the title of a tract of land was conveyed to one of them

for that purpose, and he shortly afterwards conveyed to one of the others, who still holds the legal title. They procured an act of Congress incorporating the Glenwood Cemetery Company, the managers of which were to be elected by the proprietors of the ground. There had been a public dedication upon the premises, conducted with religious ceremonies. The land contained ninety acres, thirty of which were enclosed and used for sepulture. Nearly two thousand lots were subsequently purchased, and the interments had been nearly as numerous. The deeds to the lot owners were in the name and under the seal of the corporation and signed by the president thereof, who was also the holder of the legal title. The rules and regulations were all in the name of the corporation. The lot owners becoming dissatisfied with the management of the cemetery, procured an amendment of the charter, providing for an election of three trustees by the lot owners and two by the original proprietors. The president, holding the title, denied there was a corporation, refused to appoint two trustees, and claimed to hold the property as his own. The trustees appointed by the lot owners filled the vacancies. Under these circumstances, it is held that the property was dedicated to the purposes of a cemetery in its entirety, and that the owner of the legal title cannot now deny the existence of the corporation, or that he is its president, or that the lots are held in pursuance of the charter. It was further held that the amendment by Congress was in harmony with the original charter, and was necessary to protect the interests of the lot owners; and also that the president was bound to transfer the legal title to the corporation upon receiving such compensation as may be judicially determined.

The case is stated in the opinion of the court.

T. W. Bartley and T. Jesup Miller for complainant.

J. Hubley Ashton and Nath'l Wilson for defendants.

Mr. Justice Cox delivered the opinion of the court.

To state the essential part of pleadings in this cause in the most condensed form, the bill alleges that the defendants, Joseph B. Close, Wm. S. Humphreys, S. R. Evans, and Geo. Clendenin, combined for their own private gain and established a cemetery near Washington, and for that purpose purchased a tract of land, the title of which was temporarily conveyed to Humphreys; that said parties procured an act of Congress to be passed on the 27th of July, 1854, to incorporate the proprietors of Glenwood Cemetery Co.; that of the twelve persons named as corporators, eight were residents of the District of Columbia, and the last named four were the defendants, Close, Humphreys and Evans, and one Phelps, all residing out of the District of Columbia; that according to said charter, the affairs of the company were to be managed by four managers to be elected annually by the proprietors, and until an election the four last named corporators aforesaid were to be the managers; that none of the eight residents of the District have been allowed any share in the management, but said Close, Humphreys, Phelps and Evans, organized themselves as the corporation, accepted the charter, elected Close president and the others as managers, and George Clendenin as superintendent, and they have ever since managed the institution for their private gain. That the land purchased, containing about ninety acres, was formally dedicated to

the purpose of a cemetery on the 2d of August, 1854, and rules and regulations published for the government of the cemetery, and that Humphreys thereafter conveyed the legal title, which was temporarily in him, to said Close, who thereby became trustee for the corporation; that said parties sold lots for burial purposes to over twelve hundred persons, and received the proceeds, the certificates or deeds being under the corporate seal, and signed by Close, as president; that the cemetery being greatly mismanaged, the lot owners applied to Congress for an amendment to the charter, whereupon Congress passed an amendment in February, 1877, providing for the election of three trustees by the lot holders and two by the original proprietors, for the future management of the cemetery; that thereupon the lot holders elected Jno. McLelland, S. H. Morsell and T. W. Bartley, trustees, and requested Close to appoint two others, which he refused to do, denying the existence of the corporation, and claiming the property as his own; that at an annual meeting, the lot holders elected Bartley, McLelland and Geo. W. Cochrane as a permanent board of trustees, and on the continued refusal of Close to appoint the two others, filled the vacancies by the election of Lewis Clephane and Geo. T. Keen; that the board removed Clendenin from his office of superintendent, and demanded possession of the books, papers and other property, which he has refused to surrender. That the defendant, since the amendment to the charter, have collected income from the sales of lots and applied it to his own use, and divested the whole property from the use of the corporation.

It prays that Close may be compelled to execute his trust, and conveying the property to the corporation; and the defendant may account for all moneys received since the amendment of the charter, and may be enjoined from any further interference, &c.

The answer of Close denies that the Glenwood Cemetery Company
395 is a corporation, and that he co-operated with Humphreys in procuring the passage of the act of incorporation; denies all knowledge of any acceptance of or organization under the charter or any election of officers thereunder, and avers that he became satisfied, upon inquiry, in 1876, that no such acceptance or organization took place. It admits the formal dedication, the publication and circulation of the pamphlet by the direction of Humphreys alone, but denies the legal effect attributed to these facts, and that he became trustee of the property for the company. It denies the alleged mismanagement, and the validity of the act of Congress amending the charter, as far as it seeks to divest him of his property without compensation. It admits the sales to numerous lot-holders, and their rights to their lots.

It admits that he instructed Clendenin not to surrender the property to the trustees elected by the lot holders. It admits the sale of lots since the amended charter, and the receipt of the proceeds, but denies his accountability for them. It shows the legal title to be vested in him, and denies the right of purchasers of lots to any part of the sixty acres not laid out into lots, or to any unsold lots or their proceeds.

Clendenin also filed an answer, which it is unnecessary to notice. One Borcheling, receiver in a suit between Close and his wife, and claiming under assignment from Close for the benefit of his wife, was allowed to be made a party defendant, and to file an answer.

The decree required Joseph B. Close to convey a title in fee simple to

the thirty acres now laid out into burial lots to the company, and that he and Clendenin deliver up all books, property, and effects belonging to the cemetery within thirty days, and be enjoined from hereafter interfering with the plaintiff in the management, and that an account should be taken of receipts and expenditures by Clendenin since March 17, 1877, and that the trustees should hereafter yearly, on the 1st Monday of June, pay over to Joseph B. Close, the original proprietor, one-fourth of the gross receipts from sales of lots, to be in place of the capital stock provided for in the original charter, saving the rights and interests of Mrs. Close.

From this decree Close appealed.

The facts relating to the title of the property in controversy were as follows: On the 2d of June, 1852, the tract of land, now known as Glenwood Cemetery, was purchased by Wm. S. Humpheys, of New York, from James J. Boyle, of Washington, for $9,000, and conveyed to Humphreys by deed of that date. On the 7th of April, 1853, Hnmphreys conveyed to the defendant, Joseph B. Close, of New York, an undivided moiety of the tract in fee simple. This deed, though absolute in form, was, in fact, a mortgage, and intended as security for some $20,000, which Close claims to have advanced to Humphreys. On the 22d day of June, 1854, Humphreys conveyed the entire tract to Close in fee simple with covenants of title.

Meanwhile Close claims to have advanced some $7,000 more to Humphreys. At the time of the execution of the last deed an agreement was made between them that Close would indorse the paper of Humphreys, and if the latter should provide for it and meet his obligations to Close he should have back a moiety of this property, and they should own it in common. In 1858 or 1859, Humphreys having failed to meet his engagements, relinquished his interest in the property, and Close remained the sole proprietor under this title. At the time of his advances to Humphreys Close was informed that they were to be used in the conversion of this property into a cemetery.

Until the final settlement, in 1858 or 1859, Close seems to have considered himself as mere mortgagee, as to one moiety of the property, and Humphreys, who was in possession, as a mortgagor, and as to the other moiety, of which he was the absolute owner, he regarded Humphreys as his agent, and left to him the entire management, including the disbursement of all moneys spent in the development of the property. P. 51, dep. of def't.

On the 27th of July, 1854, an act of Congress was passed entitled, "An act to incorporate the proprietors of Glenwood Cemetery."

The defendant, Close, claims that this act was procured by Humphreys without his knowledge. It declares twelve persons, who are named, and of whom the defendant, Jos. B. Close, was one, to be a body politic and corporate, by the name and title of "The Proprietors of Glenwood Cemetery, in the District of Columbia."

The charter authorizes the corporation to purchase and hold not more than one hundred acres of land north of the city of Washington, provided that at least thirty acres shall be forever appropriated and set apart as a cemetery. It empowers the managers to lay out and ornament the grounds, dispose of burial lots, make by-laws, &c. It directs that until an election of managers shall be had according to its provisions, the last

four persons named in the act (among whom were Humphreys and Close) shall be the managers of the corporation. It further enacts that the land of the company dedicated to the purposes of a cemetery shall not be subject to taxation.

On the 2d of August the formal ceremony of dedicating the cemetery took place, in the presence of a large concourse of people, with religious services and addresses.

Immediately after a pamphlet was published containing a copy of the charter, a narrative of the proceeding' of dedication (in which the
396 property is described as containing ninety acres, of which thirty were then fully prepared for interments), the names of the managers and officers (of which latter Close was named as president, Humphreys as treasurer, and Clendenin, one of the defendants, and brother-in-law of Humphreys, as superintendent), and the by-laws, of which the first declares that "all lots shall be held in pursuance of an act to incorporate the proprietors of Glenwood Cemetery, approved July 27, 1854."

This pamphlet was not only generally circulated, but specially sent to all the purchasers of lots afterwards.

It also came to the hands of Close about the time it was issued, or shortly after; and he admits that he made no objection to the appropriation of the property in the manner shown, as he likewise admits that he never made objection to any part of Humphreys' proceedings, although he denies any knowledge of them at the time they transpired.

With the full knowledge on the part of Close, then, that this publication was at least in existence, Humphreys, either in the character of mortgagor in possession or as agent of Close, proceeded to sell the lots and receive the purchase-money.

In the course of twenty years, Close executed nearly or quite 2,000 certificates or deeds of lots, which he signed as president of the company, and which bore the seal of the company, and on which were printed the by-laws, the first of which, as already stated, declared that the lots "shall be held in pursuance of the act of Congress," &c.

All this was a full ratification and adoption of Humphreys' previous management and disposition of the property, as far as any authority from Close is needed.

It is perfectly apparent, then, that the sale of these lots was accompanied with explicit representations to the purchasers—

1. That this property was dedicated to the purposes of a cemetery in its entirety.

2. That the lots were to be held in pursuance of the charter, i. e., were to be under the protection and subject to the requirements of the charter, and consequently that the charter was in force, and consequently, further, that the corporation was in existence and Close was its president.

I leave out of view other significant facts, such as the claim of exemption from taxation for the whole tract, because this was not addressed to the lot holders. If, at this late day, Close can be allowed, as against the lot owners, to deny the existence of the corporation, and assert a private ownership of this property inconsistent with the dedication before mentioned, there must be a grave defect in the ethics of the law or in the machinery of justice.

We hold him irrevocably committed, in favor of the lot owners, to a

recognition of this original charter as in force, and of the legal consequences of it.

It is true that the existence of a grant of corporate franchises from the government is not made out by estoppel. But that is not the question here. The grant from the United States was complete, without resorting to an estoppel. The completion of the corporation after that was merely an in pais, and on that an estoppel may exist. The defendant (Close), after proclaiming himself the president of an existing corporation through a period of twenty years, is clearly estopped, in our judgment, from now asserting the contrary, against those who have dealt with him on the the faith of this declaration. But this is not all; if the original charter is to be considered in force for any purpose it is for all. The lots cannot be held in pursuance of the charter, as the lot holders were notified, unless it be so in force. Then, the reservation of the right of Congress to alter, modify, or repeal the charter is also in force. The alteration made by the amended charter was perfectly in harmony with the objects of the original charter, and absolutely required to protect the interests of the lot holders. Under the first charter, the managers were to be elected by the original proprietors of the ground. But by the sale of lots, this proprietorship was changing to the lot holders, and just in proportion to the sales, the interest of these original proprietors was disappearing. With this change of interests, it was eminently proper that a change of management should take place, and that the managers should, in part, be elected by the lot holders. It certainly tended to carry into effect the object of the charter, which was to preserve this property as a cemetery, for all time, because when the lots are all sold, the lot holders alone are interested in that object, and the original proprietors cease to have any interest in it. We think this amendment, then, a legitimate consequence of the vitality of the original charter, and that the course of conduct pursued by Close has committed him, in favor of the lot holders, as much to this and to the recognition of the corporation as recognized, as it does to the recognition of the original charter as still in force. And when it is said that the estoppel can only operate in favor of the lot holders, and not in favor of the corporation, we answer, 1, that the estoppel compels him to recognize the corporation; and 2, that the lot holders and the corporation are the same; it is their organ and representative and agent, and, as such, is entitled to the benefit of this equitable estoppel.

Whatever, then, may be the proof as to actual organization of the corporation, under the original charter, we hold, that as against the defendant, Close, the corporation, as reorganized under the amendment,
397 is lawfully in court, for the enforcement of his obligations in respect to the cemetery for the benefit of the lot holders. But in the opinion of a part of the court, at least, the facts that Close has for twenty years acted as the incumbent of a corporate office, using the corporate seal, and that Humphreys and Clendenin have likewise professedly exercised such offices also, are evidence sufficient of an actual organization under the charter.

Let us now inquire what are these obligations of Close: What is the legal effect of the acts before mentioned, in the direction of a dedication of this property to the use of others than the proprietors? What is the nature of the alleged dedication?

It has been argued that the fee-simple title of property cannot pass by dedication; that there was no dedication here to the public or to any charitable use, or to the lot owners, because at the time of the ceremony of dedication there were none such, &c.

It is not necessary to controvert these propositions.

The kind of dedication that can be claimed may be illustrated by examples given in the American note to Dovaston v. Payne, 2 Smith's Leading Cases.

"This (it is said), if one owning land exhibits a map of it, on which a street is defined, though not as yet opened, and building lots be sold by him with reference to a front or rear on that street, or lots be conveyed, being described as by streets, this is an immediate dedication of the streets, and the purchasers of lots have a right to have that street thrown open forever."

Again, "if the owner of land lays out and establishes a town, and makes and exhibits a plan of the town, with various plats of spare ground, such as streets, alleys, quays, &c., and sell the lots with clear reference to that plan, the purchasers of the lots acquire, as appurtenant to their lots, every easement, privilege, and advantage, which the plan represents as belonging to them as a part of the town," &c., &c.

These general principles have been applied to the very case of a public cemetery, in the case of Hunter v. The Trustees of Sandy Hill, 6 Hill, (N. Y.), 407, which was an action of ejectment to recover ground that had been used as a public cemetery. The court said, "Dedication, the term used in reference to this subject, is the act of devoting or giving property for some proper object and in such manner as to conclude the owner. The law which governs such cases is anomalous. Under it rights are parted with and acquired in mode and by means unusual and peculiar. Ordinarily, some conveyance or written instrument is required to transmit a title to real property, but the law applicable to dedications is different. A dedication may be made without writing, by act in pais as well as by deed. It is not necessary that the owner should part with the title which he has, for dedication has respect to the possession and ends the personal estate. Its effect is not to deprive a party of title to his land, but to estop him, while the dedication continues in force, from asserting that right of exclusive possession and enjoyment which the owner of property ordinarily has."

"This being a case to which law of dedication applies, the use for which the dedication was made must determine the extent of the right parted with by the owner of the land and acquired by the public, where, as in the case of a highway, the public acquire but a mere right of passage, the owner, who makes the dedication, retains the right to use the land in any way compatible with the full enjoyment of the public easement. But the case is widely different here. The land in question was dedicated as a graveyard and the ashes of the dead should be allowed to repose in undisturbed solitude and quiet."

So, in this case, the mere ceremonial of dedication, as it was called, before referred to, had no legal effect whatever. Close might still have recalled the property from its proposed destination. But when nearly or quite two thousand grave lots were sold on the faith of the representations

we have spoken of, the dedication was complete and the lot owners acquired a right to every easement, privilege, and advantage which was held out to them as a part of the scheme. But there was something more in this case than the mere dedication of an easement. This, alone, would not affect the fee-simple title. There were acts besides, which amounted to the creation of trust, which the party may be compelled to give effect to.

It was one of the most prominent of the representations made to these purchasers that the Glenwood Cemetery Company was the owner of this property. Every deed was made in the name of the company and under its seal, and all the by-laws and regulations speak in its name as the owner. One of the commonest illustrations of constructive fraud and implied trust in the books, is the case where one having title to property simply stands by and is silent when another deals with it as if that title did not exist, and in ignorance of it. The party thus omitting to disclose his rights is precluded from asserting them afterwards to the prejudice of the party misled by his silence. (1 Story's Eq. Jur., sec. 385 to 391.)

Still more conspicuous is the fraud of affirmatively proclaiming and reiterating the title of another, as was practiced here, and inducing parties to act upon such proclamation, and afterwards asserting rights inconsistent with that title. The application of this to the present case is ap-
398 parent. It will not suffice to say that this only entitles the lot holders to have their own titles to lots made good through the corporation, because the title was asserted in the corporation, not for that object only, but for all the objects contemplated in the charter, to wit, the administration of the whole property, and that perpetually, for the purposes of this cemetery. We hold it clear, then, that Close is bound in equity to transfer this property to the corporation, in the interest of the lot holders. We do not mean to say that he is estopped from claiming further compensation for the land, for this is not inconsistent with the right of the corporation to hold and manage the property.

The argument for the defence admits the dedication so far as to bind the owner not to divert the thirty acres from the intended use, and to entitle the lot holders to have the property perpetually held and used for the purposes of sepulture.

To us it seems to go further. It was held out to the lot holders not only that the ground immediately available for burial should remain set apart for that object, but that the cemetery should be forever under the protection of a perpetual corporation, charged with the duty of laying out and ornamenting the grounds, capable of receiving gifts and bequests, and empowered to make by-laws for the regulation of the affairs of the corporation, and the whole property was described as dedicated to the purposes of the cemetery—not, necessarily, that the whole should be laid out into lots, but that it should all belong to the institution and be available for its general objects.

This was not to be a mere graveyard in which each lot holder acquired a piece of ground in which to bury his dead, and at the same time become chargeable with the sole care of his particular lot, but the lot holders themselves became subject to by-laws and regulations having reference to the institution as an entirety and the perpetual preservation of the cemetery as an ornamental and convenient place for interment and for resort by the

relatives of the dead. All this, too, requires and involves a permanent provision for the expenses of such an institution.

The scheme is not to be gratified by a mere application of the proceeds of sales of lots to current expenses, while the surplus is diverted to other objects, or the mere profit of the projectors of the enterprise; and, therefore, this dedication involves a pledge of the resources of this institution, as far as necessary to its preservation and perpetuation. It was in this faith that the lot holders bought, and certainly with no idea that the corporation would sell all the lots, appropriate the entire proceeds, then declare itself dissolved, and leave the lot holders to assess themselves for all the future needs of the cemetery. So much for the rights and legitimate expectations of the lot holders.

Now let us consider the rights of the original proprietors of the ground. The charter is entitled "An act to incorporate the proprietors of Glenwood Cemetery," and it incorporates certain twelve persons by name, including the defendant Joseph B. Close, and authorizes them to purchase not exceeding one hundred acres. It evidently contemplated that these parties would purchase and become the proprietors of the land to be used as a cemetery. It further authorized the creation of capital stock to the nominal amount of $100,000, to be divided among these parties according to their respective interests; that is, the capital stock issued to each should represent his proprietary interest in the property. It was clearly intended that the stock should represent a pecuniary value, and not that these purchasers should devote the property so to be bought by them gratuitously to the purposes of a cemetery. One of the difficulties of the case is that Congress omitted to say how far the property or the stock, which was to be its representative, should be a source of profit, from what source its dividends were to be derived, and what should be their limit. Yet that the proprietors of the property were to be compensated in some way for the property out of the sales of lots, seems clear from the very fact that they were to receive capital stock in proportion to their respective interests in the land.

Now, as matters turned out, these corporators did not purchase the land in question, but the defendant (Close) assumed to act as the entire corporation and the owner of the land at the same time. As the owner of the land he has not parted with the legal title to the corporation, nor been paid any stipulated price for it. Had the corporation been regularly organized it would have negotiated with him for the purchase of the land; he might have fixed his price and sold or have refused to sell, and the corporation might equally have refused to purchase. Without waiting for such organization he has appropriated and administered the property as if it had been transferred to the corporation, until it has passed beyond his control. He is no longer in a position to dictate terms or fix his own valuation or his interest. But if the land is not yet paid for, it is evident that he has an interest of value which cannot be taken from him without compensation.

Although, as we have seen, he is bound to make the title good in the corporation, he is still entitled to say that, as the owner of the land, he has not been compensated for it, and to have this judicially determined.

399 *Decree.—Gen'l term, June* 2, 1879.

Supreme court of the District of Columbia, in general term.

THE GLENWOOD CEMETERY
v.
JOSEPH B. CLOSE ET AL.

This cause coming on to be heard by the court in general term, on appeal from the decree rendered at special term, and having been argued and submitted, and this court being of opinion that the tract of land described in the proceedings, conveyed by Junius J. Boyle & wife to William S. Humphreys, and consisting of about ninety acres, was, by the defendant Joseph B. Close and the said Humphreys, dedicated to the purposes of a public cemetery, and that for said purposes the complainant became entitled to the possession of said premises and is also entitled to a conveyance of the legal title to said land:

400 It is by this court this second day of June, A. D. 1879, ordered, adjudged, and decreed that the defendant Joseph B. Close, within thirty days from the date of this decree, make and deliver to said complainant, the Glenwood Cemetery, a deed in fee simple of the property aforesaid, and that in default of such conveyance within said period this decree shall stand in place thereof.

And it is further adjudged and decreed that the defendants Joseph B. Close and George C. Clendenin do, within the period aforesaid, turn over and deliver to the complainant, or its authorized agent, all books, plats, or drafts of the cemetery grounds, papers, records of conveyances, and other personal property belonging to and used in connection with the business of said company, and they are hereby perpetually enjoined from interfering with or obstructing the complainant in the possession and man-

401 agement of said cemetery.

And the court being further of opinion that the said Close is entitled to be compensated for the transfer of his title in said premises, as the original proprietor thereof, and that the provision made for this object by the act of Congress of February , A. D. 1877, amending the charter of said complainant, was an equitable adjustment of the rights of said Close in the premises, and a reasonable compensation for his title and interest in said property, both in amount and mode of payment, regard being had to the needs of said cemetery, is is further adjudged and decreed that the said complainants do, annually hereafter, on the first Monday in June of each year, account for and pay to the said Joseph B. Close, or his assigns, one fourth part of the gross receipts from sales

402 to be made of lots in said cemetery; this decree, however, to be without prejudice to the claim of the defendant Charles Borcherling, as assignee and receiver of Ellen M. Close, to the interest of said Joseph B. Close, and that an account be taken, under the direction of the court at special term, of the receipts of said defendant Close from said cemetery, since March 10, 1877, and of his expenditures on account of the same, and that he be charged, in favor of the complainant, with all sums over and above one-fourth of the gross receipts from sales of lost that may have been applied to his own use, and not properly disbursed on account of said cemetery.

It is further ordered that said defendant Close pay the costs of this suit, and that the cause be remanded to the special term for further proceedings.

By order of the court:

D. K. CARTTER,
Chief Justice.

403 *Decree.—Gen. term, June* 16, 1879.

In the supreme court of the District of Columbia, in general term.

THE GLENWOOD CEMETERY
vs.
JOSEPH B. CLOSE. } In equity. No. 5877.

Now come the defendants Joseph B. Close and George Clendenin, and pray an appeal from the decree passed and entered in the above-entitled case, by the court sitting in general term, on the second day of June, 1879. And pray also that the court fix a penalty for the bond, which, when given, supersede said decree.

ASHTON AND WILSON,
Solicitors for the Defendants Joseph B. Close & George Clendenin.

404 *Order allowing appeal & fixing bond at* $1,000.00.

In the supreme court of the District of Columbia, the 30th day of June, 1879. In general term.

GLENWOOD CEMETERY
vs.
JOSEPH B. CLOSE ET AL. } In equity. No. 5877.

The above-entitled case coming on to be heard on the motion of the solicitor of the complainant to increase the penalty of the bond directed to be given by the order passed herein on the 16th day of June, 1879, it is ordered by the court, this 30 day of June, 1879, that the said order be, and the same is hereby, rescinded, and it is further ordered that the appeal of the said Joseph B. Close and George Clendenin, from the decree passed herein on the *the* 2d day of June, 1879, be, and the same is hereby, allowed, and that the said defendants give a bond for the payment of costs in the penalty of one thousand dollars.

By the court:

WALTER S. COX, *Justice.*

405 In the supreme court of the District of Columbia, the 11th day of October, 1879.

THE GLENWOOD CEMETERY
vs.
JOSEPH B. CLOSE, GEORGE CLENDENIN, & others. } In equity. 5877. Appeal.

Know all men by these presents that we, Joseph B. Close, George

Clendenin, and Nath'l Wilson, are bound unto the above-named Glenwood Cemetery in the sum of one thousand dollars, to be paid to the said Glenwood Cemetery, its successors or assigns, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this eleventh day of October, 1879.

Whereas the above-named Joseph B. Close and George Clendenin have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named Joseph B. Close and George Clendenin shall prosecute their said appeal to effect, and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

(Signed)	JOSEPH B. CLOSE.	[SEAL.]
(Signed)	GEORGE CLENDENIN.	[SEAL.]
(Signed)	NATH'L WILSON.	[SEAL.]

Sealed and delivered in the presence of—
BARTRAM ZEVELY.

Approved this 11th day of October, 1879.

D. K. CARTTER, *Ch'f Just.*

406 *Citation to S. C. U. S.—Issued Oct.* 11, 1879.

The United States of America to the Glenwood Cemetery, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, in the year one thousand eight hundred and seventy-nine, pursuant to an appeal granted by the supreme court of the District of Columbia, wherein Joseph B. Close and George Clendenin are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

D. K. CARTTER, *Ch'f Just.*

Witness the honorable chief justice of the supreme court of the District of Columbia this 11th day of October, in the year of our Lord one thousand eight hundred and seventy-nine.

407 I hereby accept service of this citation as counsel for the Glenwood Cemetery and as president of the board of trustees.

Oct. 11, 1879.

408 *Affidavit of service.—Filed Oct.* 11, 1879.

In the supreme court of the District of Columbia.

THE GLENWOOD CEMETERY
vs.
JOSEPH B. CLOSE, GEORGE CLENDENIN, ET AL. } In equity. No. 5277.

William E. Williams, being first duly sworn according to law, deposes

and says that he served the citation in this case hereto annexed on the complainant, the Glenwood Cemetery, by handing a true copy of the same to T. W. Bartley, esq., personally, on Saturday, October eleventh, 1879, between the hours of one p. m. and three p. m., and that he likewise served a copy of the same on W. F. Mattingly, esq., one of the counsel of the said Glenwood Cemetery, by leaving a true copy thereof at the office of the said Mattingly, No. 435 7th street, NW., in the city of Washington, on Saturday the 11th day of October, 1879, between the hours of two o'clock p. m. and three o'clock p. m.

WILLIAM E. WILLIAMS.

Subscribed & sworn to before me this 11th day of October, A. D. 1879.
[L. S.] BARTRAM ZEVELY,
U. S. Com's'r, D. C.

409 *Authentication of record.—Clerk's certificate.*

Clerk's office, supreme court of the District of Columbia.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate marked as containing four hundred & eight pages are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 17' day of October, 1879.

[SEAL.] R. J. MEIGS, *Clerk*,
R. J. MEIGS, JR.,
Assistant Clerk.

Justice's certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 17' day of Oct., 1879.

D. K. CARTTER, *Chief Justice.* [SEAL.]

Clerk's certificate to justice's official character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 17' day of October, 1879.

[SEAL.] R. J. MEIGS, *Clerk.*
By R. J. MEIGS, JR.,
Assistant Clerk.

410 In the supreme court of the District of Columbia.

THE GLENWOOD CEMETERY
vs.
JOSEPH B. CLOSE ET AL. } In equity. No. 5877.

The petition of Charles Borcheling, a defendant in the above-entitled

cause, shows that he is aggrieved by the decree made therein in general term on the 2d of June, 1879, and prays an appeal to the Supreme Court of the United States from said decree, and that the penalty of the appeal bond may be fixed.

W. D. DAVIDGE,
Sol'r for Charles Borcheling.

MAY 24, 1881.

[O. B. 8, p. 130.]

Appeal prayed in the foregoing petition is allowed. Bond for costs in the sum of two hundred and fifty dollars to be given.
May 24, 1881.

W. S. COX, *Justice.*

411 (Endorsed:)
Clerk please file.

W. D. DAVIDGE.

Filed May 25, 1881. R. J. Meigs, clerk.

412 THE GLENWOOD CEMETERY
vs.
JOSEPH B. CLOSE ET AL. } In equity. No. 5877.

Know all men by these presents, that we, W. D. Davidge and R. B. Washington, are bound unto the Glenwood Cemetery in the sum of two hundred and fifty dollars, to be paid to the said Glenwood Cemetery or its successors; to which payment, well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this first day of June, 1881.

Whereas Charles Borcheling, a defendant in the above-entitled
413 cause, has been allowed an appeal to the Supreme Court of the United States from the decree rendered in the said cause by the said supreme court of the District of Columbia: Now, therefore, the condition of this obligation is such that if the said Charles Borcheling, shall prosecute his said appeal to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

W. D. DAVIDGE. [SEAL.]
R. B. WASHINGTON. [SEAL.]

Sealed and delivered in the presence of—
ALBERT N. HARPER.

Approved—

W. S. COX, *Justice.*

414 THE GLENWOOD CEMETERY
v.
JOSEPH B. CLOSE ET AL. } In equity. No. 5877.

DISTRICT OF COLUMBIA, *to wit:*

To the Glenwood Cemetery:

You are hereby cited and admonished to be and appear at a Supreme

Court of the United States, to be holden at Washington, in the District of Columbia, on the second Monday of October next, pursuant to an appeal allowed Charles Borcheling, a defendant in the above-entitled cause, to show cause, if any there be, why the decree rendered in the said cause should not be reversed or corrected.

Witness the Hon. Walter S. Cox, associate justice of the supreme
415 court of the District of Columbia, this first day of June, A. D. 1881.

WALTER S. COX, *Justice.*

Service acknowledged June 1st, 1881.

TH. JESUP MILLER,
Solicitor for the Glenwood Cemetery.

(Endorsed:) Filed June 1, 1881. R. J. Meigs, clerk.

416 *Authentication of record.—Clerk's certificate.*

In equity. No. 5877.

Clerk's office, supreme court of the District of Columbia.

I, Return J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals constitute a portion of the record of the proceedings of said court in this cause, and that a full and complete transcript of the whole of said record has been certified to the Supreme Court of the United States upon the appeal taken by the defendants, Joseph B. Close and George Clendenin (No. 383, in the Supreme Court of the U. S.).

Witness my hand and the seal of said court this sixth day of May, 1882.

[SEAL.] R. J. MEIGS, *Clerk, &c.,*
By R. J. MEIGS, No. 3,
Ass't Clerk.

417 *Justice's certificate.*

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 6th day of May, 1882.

D. K. CARTTER, [SEAL.]
Chief Justice.

Clerk's certificate to justice's official character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

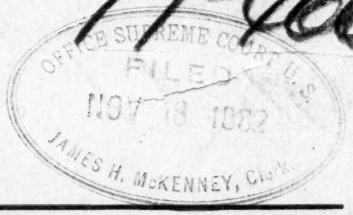
Witness my hand and the seal of said court this 6th day of May, 1882.

[SEAL.] R. J. MEIGS, *Clerk.*

(Indorsed:) Charles Borcheling, appellant, vs. Glenwood Cemetery. Transcript of record on appeal from the supreme court of the District of Columbia.

(Indorsement on cover:) No. 108. Joseph B. Close and George Clendenin, appellants, vs. The Glenwood Cemetery. Filed 18th October, 1879. No. 832. Charles Borcheling, appellant, vs. The Glenwood Cemetery. Filed 6th May, 1882. District of Columbia sup. court.

17-466



Supreme Court of the United States.

OCTOBER TERM, 1882.

No. 108.

JOSEPH B. CLOSE and GEORGE CLENDENIN, Appellants,

vs.

THE GLENWOOD CEMETERY.

No. 832.

CHARLES BORCHERLING, Appellant,

vs.

THE GLENWOOD CEMETERY.

Appeals from the Supreme Court of the District of Columbia.

Brief for JOSEPH B. CLOSE and GEORGE CLENDENIN, Appellants.

J. HUBLEY ASHTON,
NATHANIEL WILSON,
Of Counsel.

Thomas McGill & Co., Law Printers, Washington, D. C.

Supreme Court of the United States.

October Term, 1882.

JOSEPH B. CLOSE AND GEORGE CLENDENNIN, APPELLANTS,
vs.
THE GLENWOOD CEMETERY. — No. 108.

CHARLES BORCHERLING, APPELLANT,
vs.
THE GLENWOOD CEMETERY. — No. 832.

Appeals from the Supreme Court of the District of Columbia.

Brief for JOSEPH B. CLOSE and GEORGE CLENDENNIN, Appellants.

STATEMENT OF THE CASE.

These are appeals from a final decree of the Court below, in General Term, in a suit in chancery instituted in the name of "*The Glenwood Cemetery*," purporting to be a body politic and corporate of the District of Columbia, appellee, against Joseph B. Close, William S. Humphreys,

Frederick N. Close, R. S. Evans, and George Clendennin, asserting a right to the possession, and the conveyance of the legal title, of a tract of land, consisting of about ninety (90) acres, in the District of Columbia, which it is alleged was dedicated to the purposes of a Cemetery, on the 2d of August, 1854, by the defendants, Close and Humphreys.

The bill alleged that the complainant is a corporation, under and by virtue of an Act of Congress approved July 27, 1854, entitled "*An Act to incorporate the proprietors of the Glenwood Cemetery*," and an Act passed in February, 1877, entitled "*An Act to amend an Act incorporating the proprietors of Glenwood Cemetery, approved July* 27, 1854;" that certain of the corporators named in the original act of incorporation, of 1854, having combined for their own private gain and established a Cemetery near Washington, purchased a tract of land, containing ninety (90) acres, north of the city, the title of which was temporarily conveyed to the defendant Humphreys, organized themselves, as the corporation, under that Act, and elected Joseph B. Close president, the others as managers, and the defendant George Clendennin as superintendent; that the land so purchased and conveyed was formally dedicated to the purposes of a Cemetery on August 2, 1854; that after the dedication of the land to the public purposes of said Cemetery, the defendant Humphreys, who had temporarily held the legal title to the premises in trust for the purposes aforesaid, conveyed the same, in due form, to the defendant Joseph B. Close, who had been previously elected the president of the said Cemetery corporation; and that *by virtue of said dedication the said Cemetery Company became the actual owner of said premises and Cemetery grounds, and was in possession thereof as such; and that the defendant Joseph B. Close was invested with, and duly held, the legal title to the said land and premises in trust for the said Cemetery corporation*, until March 10, 1877, when he attempted to convey the same away to his son, the defendant, Frederick N. Close.

The bill further alleged that the Cemetery being mismanaged, the lot-owners applied to Congress for an amendment to the charter, whereupon Congress passed an Act, in February, 1877, to amend the charter, providing for the election of three trustees by the lot-holders, and two by the "original proprietors," for the future management of the Cemetery; that the lot-holders elected three trustees; that the defendant Joseph B. Close, as the original proprietor, refused to appoint two trustees; that the lot-holders thereupon filled the vacancies by the election of two others, of their number, as trustees; and that the said board removed the defendant, Clendennin, from his office of superintendent, and demanded possession of the property, and books and papers, which he refused to surrender.

The bill, which was filed in the name of The Glenwood Cemetery, by the trustees elected, as above mentioned, prayed that the conveyance of the premises and Cemetery grounds, by defendant Joseph B. Close to Frederick N. Close, be set aside; that the defendant, Joseph B. Close, be compelled to execute the said trust, by conveying the legal title to the premises and Cemetery grounds to the complainant; and that defendants account for all moneys received since the said amendment of the charter, and be enjoined from obstructing or interfering with the possession of the property by the said board of trustees. (Bill, Record, pp. 1–6.)

After the bill was filed, Charles Borcherling, of Newark, New Jersey, receiver appointed by the Court of Chancery of New Jersey in a divorce suit instituted against the defendant Joseph B. Close, by his wife, Ellen M. Close, filed a petition, in the suit, praying that he might be made a defendant to the bill. (Rec., p. 54.)

The Equity Court, on May 25, 1878, ordered that the

prayer of the petition be granted, and that the petitioner, Borcherling, be admitted as party defendant. (Rec., p. 58.)

Having filed an answer to the bill, Borcherling, without leave of the Court, filed a cross-bill against all of the defendants in the original bill, and against the Glenwood Cemetery. (Rec., p. 60.)

The defendants, Joseph B. Close and George Clendennin, thereupon moved that the order passed May 25, 1878, admitting Borcherling to be a party defendant in the suit, be rescinded, and that the so-called cross-bill, filed by him on May 4, 1878, be ordered to be taken from the files of the Court. (Rec., p. 85.)

The Equity Court, on June 11, 1878, *denied* the motion to rescind the order admitting Borcherling as a defendant to the original bill in this case, and *granted* the motion to take the cross-bill from the files, with leave to him to file a cross-bill as he might be advised. (Rec., pp. 85, 86.)

A demurrer was interposed to the bill by Joseph B. Close and George Clendennin, upon the grounds following, to wit: That the bill was without equity; that the plaintiff showed no claim, or right, title, or interest in or to the property; that the plaintiff showed no right or authority to institute or maintain the suit; that the bill did not show the existence or organization of a corporation by the name of The Glenwood Cemetery, and as such empowered to maintain the suit; and that the bill did not show that this suit was instituted or maintained by the said so-called corporation. (Demurrer, Rec., p. 28.)

The demurrer was overruled. (Rec., p. 29.)

Answers were thereupon filed by Joseph B. Close and George Clendennin, which fully denied the equity of the bill. (Answer of Close, Rec., pp. 29–48; answer of Clendennin, Ib., pp. 48–53.)

An answer was also filed by Charles Borcherling, receiver, who had been admitted to be a defendant on his

motion to that effect. (Answer of Borcherling, Rec., pp. 58–63.)

The defendant Frederick N. Close reconveyed to his father the land described in the bill, after the commencement of the suit; and the bill was dismissed as to him.

It was also dismissed as to R. S. Evans, who was not served; and William S. Humphreys died before the commencement of the suit.

The so-called cross-bill of Borcherling, (Rec., pp. 60–84,) which was ordered to be taken from the files of the Court, (Rec., p. 86,) appears to be no part of this record, and should not have been included in the transcript.

On the final hearing, the Court below, in Special Term, decreed: (1.) That defendant Joseph B. Close make and deliver to the complainant, the Glenwood Cemetery, a deed in fee-simple, of the parcel of real estate described in the pleadings and proceedings in this case as the *thirty* (30) *acres*, actually enclosed and used for the Cemetery proper, and *no more*, and that in respect to the *sixty* (60) *acres*, not heretofore used for Cemetery purposes, the relief prayed for in the bill be denied. (2.) That it appearing that since the institution of the suit, the defendant Frederick N. Close reconveyed to Joseph B. Close the land described, the bill be dismissed as to that defendant, and as to defendant R. S. Evans. (3.) It appearing that no capital stock was ever issued, under section 3 of the Act of July 27, 1854, and the Court being of opinion that the provision of section 6 of the amendatory Act of February, 1877, for the payment of one-fourth of the gross proceeds of the sale of lots to the "original proprietors," was designed to be in lieu of the provision in section 3, of the Act of 1854, for the issue of capital stock, the Court decreed that the defendant Joseph B. Close is the party entitled to said one-fourth of said gross proceeds under said phrase "to the original proprietors," in the 6th section of the Act of 1877,

but without prejudice to, and saving and excepting the rights and interests, if any, of Charles Borcherling, as receiver, and Ellen M. Close, to said one-fourth of said gross receipts.

The decree further ordered Close and Clendennin to deliver to the plaintiff all books, papers, &c., personal property, and effects used in connection with, and relating to, the business of said Cemetery, and perpetually enjoined Close and Clendennin from interfering with the Cemetery.

Decree at Special Term, Rec., p. 200.

From this decree, Joseph B. Close and Charles Borcherling appealed to to the General Term.

No appeal was taken to the General Term by the complainant, "The Glenwood Cemetery," from that portion of the decree of the Court in Special Term, in respect to the sixty (60) acres not used for Cemetery purposes, and which denied the relief prayed for in the bill in respect to that portion of the land in controversy.

See Appeals to General Term, Rec., pp. 200–201.

The Court below, in General Term, entered a decree to the following effect: (1.) That the tract of land described in the proceedings, and consisting of about ninety (90) acres, was, by defendant Close and the said Humphreys, dedicated to the purposes of a public Cemetery, and that for said purposes complainant became entitled to the possession of said premises and to a conveyance of the legal title to said land. (2.) That Joseph B. Close deliver to complainant a deed in fee-simple of the property. (3.) That defendants Close and Clendennin turn over to complainants all books, papers, &c., and other personal property belonging to, and used in connection with, the business of said company. (4.) That they be perpetually enjoined from interfering with complainant in the possession and management of said Cemetery. (5.) That the Court being

of opinion that Close is entitled to be compensated for the transfer of his title, in said premises, as the original proprietor thereof, and that the provision for this object by Act of February, 1877, was an equitable adjustment of the rights of Close in the premises, and a reasonable compensation for his title and interest in said property, both in amount and mode of payment, complainant do annually account for and pay to said Close, or his assigns, one-fourth of the gross receipts from sales of lots in said Cemetery, without prejudice to the claim of Borcherling, as assignee and receiver of Ellen M. Close, to the interest of said Close. (6.) That an account be taken of the receipts of Close from said Cemetery since March 10, 1877, &c.

Decree in General Term, Rec., p. 212.

From this decree, appeals were taken to this Court by defendants, Joseph B. Close and George Clendennin, (No. 108,) and by Charles Borcherling, (No. 832.) (Record, pp. 213, 214.)

The Pleadings.

The material substance of the Bill has been given in the preceding *Statement of the Case.*

It asserts that the complainant is a body politic and corporate of the District, organized, in the manner and under the circumstances mentioned, under the Act of July 27, 1854, and the amendatory Act of February, 1877; that the tract of ninety (90) acres in question, was purchased by *defendants Close, Humphreys, Evans, and Clendennin, for the purpose of a Cemetery near Washington, and that the title was temporarily conveyed to Humphreys;* that those parties procured the Act of July 27, 1854, to incorporate the proprietors of Glenwood Cemetery; that of the *twelve* persons named as corporators, *eight* were residents of the District of Columbia, and *four*, (Close, Humphreys, Evans, and

Phelps,) resided out of the District; *that Close, Humphreys, Evans, and Phelps organized themselves as the corporation, accepted the charter, elected Close president, and the others as managers, and that they thenceforth managed the institution for their private gain;* that on August 2, 1854, the ninety (90) acres thus purchased were formally *dedicated to the purpose of a Cemetery*, and that, BY VIRTUE OF SAID DEDICATION, *the said Cemetery Company became* THE ACTUAL OWNER OF SAID PREMISES AND CEMETERY GROUNDS, *and was in possession thereof as such;* that Humphreys thereafter conveyed *the legal title, which was temporarily in him, to Close, who became trustee for the corporation;* that defendants, Close, Humphreys, Evans, and Clendennin, publicly professing that said Cemetery was incorporated and conducted under said Act of incorporation, above granted by Congress, have sold to, and received money from, numerous persons, and given certificates of title, executed under the corporate seal of said company, by Joseph B. Close, as president of the corporation; that by authority of said defendants, as managers of said Cemetery corporation, the tract of ninety (90) acres was reported to the tax assessors of the District of Columbia as dedicated to the purposes of said Cemetery corporation, and thereby has been held continuously exempted from taxation heretofore; that the affairs of the institution were conducted in a way very unsatisfactory to the lot-owners; that the lot-owners applied to Congress for an amendment of the Act of 1854, under the power reserved to alter, modify, or repeal the charter; that they obtained the Act of February, 1877, elected five trustees, removed Clendennin as superintendent, and demanded possession of the property; that the legally constituted board of trustees of said Cemetery is wrongfully obstructed by defendants in the exercise of their authority, and prevented from taking possession and control of said premises and Cemetery grounds, and otherwise hindered in the discharge and exercise of their corporate functions and duties;

that said defendants, since the amendment of the charter, have repudiated the said corporate franchises, and reorganization under the charter; that they have received, since the reorganization of the company, under the amendment of its charter, large amounts of money from the sales of lots, which should have been paid over to plaintiff and its legally constituted trustees, &c.

The prayer of the bill (so far as now material) is, that Joseph B. Close be "compelled to execute the said trust, which he has abused as aforesaid, by conveying the legal title to the premises and Cemetery grounds aforesaid to the plaintiff, The Glenwood Cemetery Company;" that defendants may account for moneys received since the amendment of the charter; and that they may be enjoined from further interference. (Bill, Rec., pp. 1–6.)

The answer of Joseph B. Close explicitly denies—

That there is any such corporation as The Glenwood Cemetery. (Par. 1, Rec., p. 29.)

That prior to 1854 he combined with Humphreys, Evans, and Clendennin to establish a Cemetery in the District of Columbia. (Par. 2, Ibid.)

That he co-operated with them to procure the Act of July 27, 1854. (Ib.)

That the land described in the bill was purchased and temporarily conveyed to Humphreys for the purpose of carrying out any such combination or undertaking. (Ib.)

That there ever was any acceptance of said charter, or any organization of the proprietors under said Act of incorporation, or any election of president, or managers, or any appointment by the managers of a superintendent. (Par. 3, Rec., p. 30.)

That there was any dedication of lands described in the bill by any deed, act, or gift other than the exercises and ceremonies referred to in the bill. (Par. 4, Rec., p. 31.)

That said ceremonies were performed under his direction.

That said lands were conveyed to him by the said Humphreys after the said ceremonies. (Par. 6, Ibid.)

That by reason of said ceremonies the said Cemetery Company became the actual owner of said land and premises and of said Cemetery grounds, and was in possession thereof as such, and that the whole legal title was vested in him, the said Close, in trust for said Cemetery corporation. (Ibid.)

That the affairs of the Cemetery were conducted in a way unsatisfactory to the lot-owners, and that imposition and abuse were practiced in the management of the Cemetery. (Par. 7, Ibid.)

That the trustees named in the bill were legally elected; and that said trustees are legally entitled to demand possession of said Cemetery grounds, or to exercise any control over them. (Par. 9, Rec., p. 32.)

That, since the Act of 1877, he has wrongfully and fraudulently repudiated the said corporate franchises and organization, or wrongfully diverted the Cemetery grounds and property from the use and control of said corporation, and surreptitiously appropriated the same to his own private use. (Par. 12, Rec., p. 33.)

The answer shows—

That he (Close) became, and is, the sole owner of the land in controversy, under the conveyances by Humphreys referred to. (*See Statement of Facts, infra*, Rec., pp. 34, 35.)

That no person or persons other than Humphreys and himself contributed any of the money which was used in the purchase of the land and the preparation and construction of the said Cemetery, or had any right, title, or interest therein. (Par. 14, Rec., p. 35.)

That he took no part in any efforts of Humphreys to obtain an Act of incorporation.

That up to 1854, and for some time thereafter, Humphreys had the exclusive management of the property and Cemetery, and he conducted the affairs of the Cemetery as though it belonged to him alone. (Ibid., p. 34.)

That he has no knowledge by whom the so-called corporate seal, or the form of the certificates of title, was prepared. (Rec., p. 35.)

That no stock of the corporation was ever issued, and since the conveyance to him by Humphreys, and the release of the trust deed, in 1859, he has been the sole owner of all the property conveyed to him by Humphreys, saving and excepting the lots which were by him sold from time to time. (Ibid.)

That the title to the lots so sold he has never claimed, but has always held himself ready to make any conveyances that may more fully give to the purchasers of lots a good and perfect legal title to the same. (Rec., p. 35, fol. 68.)

That of the tract (90 acres) purchased by Humphreys, and subsequently conveyed to him, about thirty (30) acres had been, prior to August 2, 1854, laid off by Humphreys into lots, drives, and walks, and had been improved and embellished, and inclosed with a substantial fence.

That this inclosure constituted the Cemetery.

That the remaining sixty (60) acres have never been divided into lots, but remained, and still remain, woodland and pasture, and have been used for agricultural purposes, and surrounded by a post-and-rail fence.

That the proceeds of the sales of lots, and all other income derived from the property, have been applied, primarily, to the preservation, improvement, and adornment of the Cemetery grounds, which have always been, and are, maintained in as good a condition, in all respects, as the grounds of any other Cemetery in the country, with few exceptions. (Rec., p. 36.)

That after the passage of the Act of 1877, through ap-

prehension that his property was about to be illegally appropriated, he made the conveyance referred to in the bill, (to his son,) not for the purpose of defrauding any person, or persons, who has, or have, any right, title, or interest in the lots and property sold by him, but in order that he might the better secure time and opportunity to avail himself of his rights and remedies in the premises.

That he never intended to injure or defraud any person, or persons, whatsoever, in the purchase and sale of said property, or any part thereof, and never intentionally deceived either the public or any individuals in relation to the creation of said corporation or the proceedings under and in pursuance of said Act of Congress, or obtained any money by false representations concerning said property. The truth concerning the title thereto has always been a matter of public record.

That he recognizes the rights of those who have purchased lots, as aforesaid, to have the property of said inclosure set apart and appropriated for Cemetery purposes, but denies that the purchasers have acquired any title in and to that part of said inclosure not sold, or to the proceeds thereof, and denies their title to any part of the sixty acres of said tract not inclosed as aforesaid, or to the proceeds thereof, and avers that said amendatory Act, which takes from him three-fourths (¾) of the proceeds of the sales of all lots, and gives them to other persons, not entitled, without any compensation to him, is in violation of the Constitution of the United States, and void and of no effect. (Rec., p. 37.)

Answer of Close, Rec., pp. 29–48.

The answer of George Clendennin shows that he was the superintendent and manager of the Cemetery from its establishment, in 1854, until deposed by the order of the Court below, at Special Term, and states with particularity the history of the Cemetery. In all material respects, it

corresponds, in its denials and averments, with the answer of Close. (Answer of Clendennin, Rec., pp. 48–54.)

The answer of Charles Borcherling alleged that, by virtue of a decree of the Court of Chancery of New Jersey, made November 3, 1875, and a deed of assignment made by Joseph B. Close under said decree, he became possessed of the personal estate of Mr. Close, and especially the capital stock of the Glenwood Cemetery, and all profits and dividends, or other moneys coming to him therefrom, and of the rents and profits of his real estate, and that it is his right, if the prayer of the bill be granted, that the corporation should issue capital stock to the amount of $100,000, and that such capital stock should be issued, not to Close, but to the respondent. (Answer of Borcherling, Rec., p. 59.)

A replication was filed by the Glenwood Cemetery to the answers of Close, Clendennin, and Borcherling. (Rec., p. 86.)

The Proofs.

The testimony on the part of the complainant related, mainly, to the alleged dissatisfaction of the lot-owners with the management of the Cemetery by Clendennin, the grounds of their complaints, and the circumstances under which the Act of 1877 was procured; the understanding of some of the lot-holders, when they purchased their lots, as to the extent of the land originally "dedicated" to the purposes of the Cemetery, the existence of the corporation, and the character of the title to the property; the delivery to the purchasers, by Clendennin, as superintendent, for Close, of copies of the printed pamphlet referred to, containing an account of the ceremonies in August, 1854, and the rules and regulations of the Cemetery; and the claim

of the exemption of the property from taxation. (Depositions for Complainant, Rec., pp. 87–135.)

On the part of the defendants, several persons of known respectability were examined to show that the management of Clendennin, as superintendent, during a period of more than twenty years, had been honest and satisfactory to the great body of the lot-holders. (Rec., pp. 136–160.)

The defendant Joseph B. Close was examined and cross-examined at great length, and produced in evidence his deeds for the property from Humphreys, as mentioned in the following *Statement of Facts*, and testified to the circumstances under which he acquired the property and subsequently conducted the Cemetery. (Deposition of Close, Rec., pp. 161–191.)

William Banks and William Phelps, two of the persons named as corporators in the Act of 1854, were also examined to prove that they knew nothing of that Act; that the charter was never accepted, and that no organization thereunder was ever effected. (Rec., pp. 195–199.)

No evidence was given on the part of Charles Borcherling, admitted as defendant in the suit.

Before presenting the Argument on the questions of law involved, we submit, from the whole record, the following

Statement of Facts.

Glenwood Cemetery, the title of which is involved in this suit, is situated in the District of Columbia, a short distance, about a mile and a half, from the City of Washington. It is part of a tract of ninety acres of land, originally

known as "Shamrock Hill," and formerly owned by Junius J. Boyle, of Washington.

On the 2nd of April, 1852, this tract, containing, as has been mentioned, some ninety acres, was purchased from Junius J. Boyle by one William S. Humphreys, of the City of New York, since deceased, for $9,000, and conveyed by Boyle to Humphreys, by deed of that date. (Record, pp. 177, 178.)

This conveyance was subject to a deed of trust, executed at the same time, by William S. Humphreys to Charles S. Wallach, trustee, to secure three notes for $7,500, given by Humphreys to Boyle for part of the purchase-money of the land. (Ibid., pp. 185, 186.)

This land was no doubt purchased by Humphreys with the design of establishing there a Cemetery; and shortly afterward he began work upon it to that end.

Thirty (30) acres of the tract were inclosed by a substantial fence, and laid off, by an engineer, as a Cemetery, in lots, drives, walks, &c. The remaining sixty (60) acres were left, and have ever since remained in their original condition of pasture, or agricultural land. (Ibid., p. 143.)

In March, 1853, appellee, George Clendennin, a brother-in-law of William S. Humphreys, came from New York, and took charge of the property for Humphreys. (Ibid., p. 142.)

On the 7th of April, 1853, Humphreys conveyed to Joseph B. Close, appellant, also residing, at that time, in the City of New York, one undivided moiety of the whole tract, by deed in fee-simple. (Ibid., pp. 179, 180.)

This deed was intended to secure the repayment of some $20,000, which Humphreys borrowed from Close for the purposes of his enterprise. (Ibid., pp. 163, 169.)

Subsequently Close advanced to Humphreys some $7,000 more; and, on the 22nd of June, 1854, Humphreys, who had become embarrassed, conveyed to him the entire tract of ninety acres in fee-simple. (Ibid., pp. 182–184.)

At the time of the execution of this deed, an agreement was made between Humphreys and Close, that Close would furnish money to complete the Cemetery, and indorse the notes of Humphreys, and that if Humphreys paid his notes at maturity he should have back a moiety of the property, and that they would divide the expenses. (Ibid., p. 164, 170.)

Humphreys failed to meet his engagements; the original purchase-money notes given by him to Boyle were paid at maturity by Close; and, on the 24th of September, 1859, Humphreys executed, in favor of Close, a relinquishment of his interest in the property, and Close remained the sole owner under the conveyances to him. (Ibid., p. 188, fol. £66.)

On June 1, 1857, the trust created by the deed of Humphreys of June 2, 1852, to secure the original purchase-money, was released by the trustee, Charles S. Wallach. (Ibid., p. 187.)

After the conveyance of June 22, 1854, Close furnished all the moneys which were expended by Humphreys in the development and improvement of the Cemetery grounds. (Ibid., p. 169.)

The moneys advanced and furnished by Close, under the circumstances mentioned, and expended in the establishment of the Cemetery, amounted, in the aggregate, to some fifty-three or fifty-four thousand dollars; and the amount expended by Humphreys and Close for those objects, prior to 1859, was about sixty thousand dollars. (Ibid., p. 169.)

No persons, other than Humphreys and Close, contributed, in any manner, a dollar for those objects.

Prior to 1858, or 1859, the property was managed, and the moneys were disbursed, by Humphreys, or Clendennin, his agent, as superintendent of the Cemetery.

After that time, Humphreys having relinquished his interest in the tract, as mentioned, Close assumed control of

the property, and managed it through Clendennin, who continued superintendent of the Cemetery. (Ibid., pp. 170, 171, 142–144.)

Congress, on the 27th of July, 1854, passed an Act entitled "*An Act to incorporate the Proprietors of Glenwood Cemetery.*" (10 Statutes, 789.)

This Act constituted twelve persons, therein named, (Charles B. Calvert, George Parker, William B. Todd, James C. McGuire, William A. Bradley, Charles S. Wallach, Abner Miller, William Banks, Joseph B. Close, William Phelps, William S. Humphreys, Randolph S. Evans,) and their successors, a body politic and corporate, by the name and title of the proprietors of the "Glenwood Cemetery, in the District of Columbia," with power to purchase and hold not more than one hundred acres of land north of the city of Washington, provided that, at least, thirty acres should be forever appropriated and set a part as a Cemetery.

The Act provided that the capital stock of the said company should be represented by two thousand shares, of fifty dollars each, distributed among the proprietors according to their respective interests; that in all elections, under the Act, each proprietor should be entitled to one vote for each share held by him or her; and that the affairs of the corporation should be conducted by a president and three managers, to be elected annually by a majority of the votes of the proprietors.

It is certain, from the proofs in this case, that this proposed charter was never, in any manner, applied for, or solicited, by any of the persons named in the Act, except William S. Humphreys; that it was never accepted in any manner, expressly or otherwise, by those persons, or a majority of them; that they never organized, or met, or performed any act, or exercised any power, function, or franchise, corporate or otherwise, under the tendered char-

ter; and that, in fact, no corporate existence, *de facto* or *de jure*, was ever acquired by any person or persons by virtue of the Act.

After the passage of the Act of 1854, on the 2d of August of that year, William S. Humphreys, who was then in Washington, caused to be performed, on the grounds, certain religious and other ceremonies, which were described at the time as the "dedication" of Glenwood Cemetery. (Record, p. 9 *et seq.*)

Those proceedings were at the instance, and under the exclusive direction and control, of Humphreys. Neither Close, nor Evans, nor Phelps, nor, apparently, any other corporator, named in the Act of 1854, was present on the occasion. (Ibid., pp. 165, 144.) And Close knew nothing of the ceremony of dedicating the Cemetery until after it occurred. (Ibid., p. 165.)

After the purchase of the tract by Humphreys, and previous to the dedication referred to, Humphreys caused thirty (30) acres to be laid off, in the fashion of a Cemetery, into lots, drives, walks, &c., and surrounded by a seven-foot paling fence, which entirely separated that portion from the remaining sixty (60) acres. (Ibid., p. 143.)

This inclosed space of thirty (30) acres constituted, at the time of the dedication, all there was of a Cemetery; and the limits of the Cemetery were never afterwards enlarged.

After the Cemetery was thus opened, Humphreys caused to be published and circulated a printed pamphlet, (which was also subsequently handed to the purchasers of lots,) containing an account of the ceremonies, on the 4th of August, 1854, a copy of the Act of July 27, 1854, the "*Rules and Regulations of the Glenwood Cemetery in the District of Columbia*," and describing J. B. Close as president, J. B. Close, Wm. Phelps, Wm. S. Humphreys, and R. S. Evans as managers, Wm. S. Humphreys as treasurer, and Geo. Clendennin as superintendent. (Ibid., pp. 7–22.)

After the opening of the Cemetery, Humphreys proceeded to sell burial lots therein, giving to the purchasers certificates of title in the name of the "Glenwood Cemetery Company," signed by "J. B. Close, President," under the so-called common seal of the company, on which were printed the "rules and regulations" of the Cemetery, above mentioned, which declared that "all lots shall be held in pursuance of an Act to incorporate the proprietors of Glenwood Cemetery, approved July 27, 1854." (Ibid., p. 25.)

Before and after Humphreys relinquished possession, in 1858 or 1859, the business connected with the sales of burial lots was transacted by Clendennin, as superintendent, acting exclusively for Humphreys, and Close, who alone exercised, or assumed to exercise, control over the property. (Ibid., pp. 143, 148.)

After the Cemetery was opened, and prior to January, 1876, about 1300 full burial lots, being something over one-half of the entire number in the Cemetery, (2600,) were sold and conveyed as above mentioned, and the gross receipts from the sales of lots, and all other sources, during that time, amounted to $160,000. (Ibid., pp. 145, 168.)

About ninety thousand dollars ($90,000) have been expended by Mr. Close on the Cemetery; and about seventy thousand have been repaid to him; and this is not quite six per cent. of the amount laid out by him in the purchase, preparation, and improvement of the property. (Ibid., pp. 168, 174, 145.)

The land was claimed to be exempt from taxation, under the Act of 1854, and the claim was allowed by the authorities of the District. (Rec., pp. 98–100.)

Some time prior to 1876, several of the lot-holders became dissatisfied with certain regulations made or enforced by Clendennin, as superintendent, particularly in regard to

the improvement and decoration of their lots; and application was made by them to Congress for a modification of the supposed charter.

On the 19th of June, 1876, the House Committee on the District of Columbia reported a bill (H. R., No. 3741) to amend the Act of July 27, 1854, which provided that "nothing in the Act of incorporation shall prevent the owner or owners of any lot or lots from making improvements or decorations therein, without let or hinderance, as may not be inconsistent with the objects and purposes of said Cemetery." (Cong. Record, 44th Cong., 1st Sess., vol. 4, part 4, p. 3893.)

This Bill passed the House; and, on June 21, 1876, was referred to the Senate Committee on the District of Columbia. (Ibid., p. 3943.)

At the next session, the Committee reported the Bill back to the Senate, when Mr. Sherman, of Ohio, offered a substitute, prepared by some of the lot-holders, and intended to confiscate, in effect, this entire property for their benefit. (Cong. Record, 44th Cong., 2d Sess., vol. 5, part I, p. 591.)

The legal validity of the measure was ably contested by Senator Ingalls, the Chairman of the Committee on the District of Columbia, who had carefully studied the subject.

It, however, passed the Senate. In the House, it was non-concurred in; but, on the report of a Conference Committee, who amended the Bill in some particulars, it passed both Houses, and became an Act of Congress without the President's approval. (Cong. Record, 44th Cong., 2d Sess., vol. 5, part 2, pp. 1478, 1511.)

The Bill which became an Act of Congress under these circumstances, is entitled "*An Act to amend an Act incorporating the Proprietors of Glenwood Cemetery, approved July* 27, 1854." (19 Statutes, 266.)

It declares that the name and title of the corporation shall be, *The Glenwood Cemetery.*

It purports to place the affairs, business, and property of said corporation under the direction, control, and management of a board of five trustees, any three of whom shall constitute a quorum, to be elected annually, on the first Monday of June, *three* by the *proprietors of lots* in said Cemetery, and *two* by the original proprietors; at the election of trustees at the annual meeting of the proprietors of lots, each lot proprietor to be entitled to one vote for each lot owned by him; and the trustees to have authority to fill temporary vacancies occurring in their board, and to hold their offices until their successors are elected and qualified.

It declares that any person who may refuse peaceable possession of said grounds to said trustees, or obstruct or disturb such possession in said trustees, shall forfeit, and pay as a penalty, one hundred dollars for each and every day of such refusal or disturbance, to be collected in an action of debt in the name of the Cemetery corporation.

It declares that the words "*the proprietors,*" where they occur in the original Act of 1854, *shall be interpreted and construed to mean and shall signify the proprietors of lots in said Cemetery, which is declared to be the true intent and meaning of the said words.*

It finally declares that "from the receipts from the sale of lots hereafter sold, of the ground now dedicated to burial purposes, there shall be paid, on the first Monday in June in each year, by the board of trustees to the original proprietors, *one-fourth* of the gross receipts arising from such sales, *the remainder to be devoted to the improvement and maintenance of the Cemetery.*"

Mr. Close having repudiated this Act, and the claim of right of the lot-holders, under it, to control and dispose of his property, the lot-holders appointed *five* trustees, who

proceeded to exercise the authority pretended to be granted by the Act of 1877. (Rec., p. 5.)

On October 25, 1877, this "board of trustees" filed the present bill in the name of "The Glenwood Cemetery," against Close and Clendennin, to enforce their pretended rights in respect to this property.

Assignment of Errors.

The Court below erred:

I. In not dismissing the bill in this case as to all the defendants.

II. In deciding that the Glenwood Cemetery is a body politic and corporate of the District of Columbia, and that there is such a corporation as the Glenwood Cemetery, as in the bill, in this case, supposed and mentioned, competent to institute and maintain this suit.

III. In adjudging that the tract of land, described in the proceedings, conveyed by Junius J. Boyle and wife to William S. Humphreys, or any part of it, was, by the defendant, Joseph B. Close, and the said Humphreys, dedicated to the purposes of a public Cemetery, and that for said purposes the complainant became entitled to the possession of said premises, and is also entitled to a conveyance of the legal title to said land.

IV. In adjudging and decreeing that the defendant, Joseph B. Close, make and deliver to said complainant a deed in fee-simple of the property aforesaid.

V. In adjudging and decreeing that the defendant, Joseph B. Close, make and deliver to said complainant a deed in fee-simple of the parcel of land, mentioned and

described in the pleadings and proceedings, in this case, as the thirty (30) acres actually inclosed and devoted to, and used for and as, the Glenwood Cemetery.

VI. In adjudging and decreeing that the defendant, Joseph B. Close, make and deliver to said complainant a deed in fee-simple of the parcel of land, mentioned and described in the pleadings and proceedings, in this case, as the sixty (60) acres not heretofore used for Cemetery purpose.

VII. In adjudging and decreeing that the defendants, Joseph B. Close and George Clendennin, deliver to the said complainant all books, plats, or drafts, of the said Cemetery grounds, papers, records of conveyances, and other personal property belonging to and used in connection with the business of said Cemetery.

VIII. In perpetually enjoining the said defendants from interfering with or obstructing the said complainant in the possession and management of said Cemetery.

IX. In adjudging that the provision made in the Act of Congress of February, 1877, entitled "An Act to amend an Act incorporating the proprietors of Glenwood Cemetery," for the payment, annually, to "the original proprietor," one-fourth of the gross receipts arising from the sales of lots, in said Cemetery, is an equitable adjustment of the rights of the defendant, Joseph B. Close, in the premises, and is a valid, constitutional provision for compensation for his title and interest in the said property, in amount and mode of payment.

X. In recognizing Charles Borcherling as a defendant in this suit, and directing that the said decree be without prej-

udice to the supposed claim of said Borcherling, as assignee and receiver of Ellen M. Close, to the said interest of said Joseph B. Close.

XI. In directing an account of the receipts of said defendant, Joseph B. Close, from said Cemetery, since March 10, 1877, and of his expenditures on account of the same, and that he be charged, in favor of complainant, with all sums over and above one-fourth of the gross receipts from sales of lots that may have been applied to his own use, and not properly disbursed on account of said Cemetery.

ARGUMENT FOR APPELLANTS.

First.

It is clear, from the proofs in this case, that the grant of corporate franchises contained in the Act of July 27, 1854, was not accepted by the persons therein named; that the charter never took effect; and that no corporation, *de facto* or *de jure*, was *in esse* at the time of the transactions set forth in the bill, capable of acquiring title, legal or equitable, to the land in controversy.

The case is, therefore, within the principle that "if a man grants his estate to an imaginary corporation, which exists only in his own mind, no title passes." (Russell *v.* Topping, 4 McLean, 201.)

1. The first issue in the case relates to the existence of any corporation at the time of the "dedication" of the Cemetery, and the sales of lots therein, capable of becoming the owner of the land involved in this suit, and the present corporate existence of "The Glenwood Cemetery," in virtue of the Act of July 27, 1854, and the so-called amendment of February, 1877.

The bill avers that The Glenwood Cemetery is a body politic and corporate of the District of Columbia, under the Act of 1854, and the so-called amendatory Act of 1877; that Humphreys, Evans, Close, and Phelps organized themselves as proprietors under the Act, accepted the charter, and elected Joseph B. Close as the president, and Humphreys, Evans, and Phelps as managers; and that the board of managers, thus organized, appointed Clendennin as superintendent, and proceeded to manage the affairs of said Cemetery corporation under the authority of said Act of incorporation. (Rec., p. 2, fol. 3.)

The bill charges that the said Cemetery corporation, by virtue of said dedication, became the actual *owner* of said premises and Cemetery grounds, and was in possession thereof as such, and that first Humphreys, and then Close, had the legal title to the said land and premises *in trust* for the said Cemetery corporation. (Rec., p. 3, fol. 4.)

The answer of Close avers that The Glenwood Cemetery is not a body politic and corporate, and denies that there is any such corporation as The Glenwood Cemetery, as in the bill supposed and mentioned. (Rec., p. 29.)

It also denies "that there was ever any acceptance of said charter, or any organization of the proprietors under said Act of incorporation, or any election of president or managers, or any appointment, by the managers, of a superintendent;" and requires plaintiff to make strict proof of the allegations made in respect of said alleged acceptance and organization. (Rec., p. 30, fol. 61.)

The averments of the bill, and the proofs in the record, show affirmatively that the charter was *not* accepted by the persons therein named as the proposed body politic, and that the incorporation, therefore, never took effect, and that there is no such corporation as The Glenwood Cemetery, as the bill supposes and mentions.

If we are right in this view, it is plain that, whatever may be the law applicable to the transaction mentioned in the bill, as the foundation of the title asserted to this land, there was no corporation *in esse*, at the time of that transaction, capable of taking any title to the land, and that there is no corporation now in existence to whom the relief prayed in this bill can be granted.

The principles of law in regard to the creation and existence of private corporations are well settled.

A private corporation, like a copartnership, is a voluntary association formed by the mutual agreement of the persons composing it.

It is impossible, therefore, that a private corporation be formed without the action of the corporators; for the Legislature has no power to create the mutual consent essential to every contractual relation.

Nor is the grant of a charter of incorporation intended to constitute the grantees a corporation, without their concurrence; its purpose is merely to confer on them the *franchise*, or *privilege*, of forming a corporate body, and acting in a corporate capacity.

The rule that a grant does not become operative until accepted, applies, therefore, in full force, to a grant of the *franchise to be a corporation*, (1 Bl. Com., 123,) and no charter of incorporation is of any effect until it is accepted by, at least, a *majority* of those who are intended to be incorporated.

Angell & Ames, sec. 81.
Dartmouth College Case, 4 Wh., 688.
Ellis *v.* Marshall, 2 Mass., 279.
Falconer *v.* Campbell 2 McLean, 196.
State *v.* Dawson, 16 Ind., 41.
Shortz *v.* Unangst, 3 Watts & S., 52.
Comm. *v.* Cullen, 13 Pa., 143.

The principle is well stated by Angell & Ames, (Corporations, sec. 81,) thus: "Private corporations are created by a charter from the Government, which is in the nature of a *contract*, and, therefore, in order to complete their creation, something more than the mere *grant* of a charter is required; that is, in order to give to the charter the full force and effect of an executed contract, it must be *accepted;* as the Government cannot incorporate persons for their benefit in consideration of the benefit to accrue to the

Government, or to the public, without the consent of such persons."

It is said, that, in cases of certain private corporations, created for individual benefit, the presumption is that they are authorized at the instance of those to be benefited thereby, and, consequently, that the grants are accepted by them; but that presumption is subject, of course, to be rebutted, by proof, in the particular case, that the charter was not accepted by the grantees, and that they did not become a body politic.

2. It appears, affirmatively, in this case, that a majority of the persons intended to be incorporated by the Act of July 27, 1854, did not accept that charter, and vitality was never given to the artificial being contemplated by the Act.

The non-acceptance of this charter by the corporators is a fact shown upon the face of the bill itself, and, therefore, admitted by the complainants.

There were twelve (12) corporators named in the Act.

The bill expressly avers that "the *eight* persons first named as corporators were made mere nominal corporators, and being citizens of the District of Columbia, were used for the mere purpose of enabling the said *four* non-residents of the District to obtain the said Act of incorporation, and none of the said first-named corporators were even called upon, or allowed, to aid in the organization of the company, and none of them have ever been allowed to take any interest, or part, whatsoever, in either its organization or its management; but having secured the charter, the said *four* last-named corporators, (Close, Humphreys, Phelps, and Evans,) availing themselves of the said sixth section, organized *themselves* as the proprietors under said Act, *accepted* the charter," &c.

It is thus expressly averred and shown that a majority of the corporators did not accept the charter, and that the

only alleged acceptance was by a minority of the corporators, who could not give vitality to the corporation.

The corporate franchise was expressly granted, not to the four last-named corporators, but to the twelve corporators, and the assent of, at least, a majority of this number was necessary to give effect to the charter, and that assent, the bill shows, was never had.

The sixth section of the Act merely constituted the four last-named persons managers of the corporation, until an election by the stockholding proprietors.

It did not constitute those persons the corporation, or invest them with the corporate powers and franchises, or authorize them to accept the charter for the company.

But this is not all. It is affirmatively shown, by the testimony of Close, and that of R. S. Evans, (one of the four last-named corporators,) that there never was any meeting of the four last-named corporators; and that they never organized themselves as the proprietors, or elected officers under it. There never was a *de facto* organization, even of those four persons, or any attempt, on their part, to accept the charter. The averment of the bill that the charter was "accepted" by the non-resident corporators is, therefore, disproved.

Second.

Estoppel cannot supply the place of an acceptance of the charter, and a *de facto* organization under it, in favor of the lot-owners, or of the Government.

1. As to the *lot-owners*, the Court below held that Close was estopped to deny the existence of the corporation, and observed in its opinion: "It is true that the existence of a grant of corporate franchises from the Government is not made out by estoppel. But that is not the question here. The grant from the United States was *complete* without resorting to an estoppel." (Rec., p. 208.)

Under the authorities above cited, it seems clear, that the grant was not complete in the sense intended, without an acceptance of the Act of incorporation by the persons named in it. Until their acceptance, the grant, in the language of this Court, was "yet *in fieri*." (*Dartmouth College Case*, 4 Wheaton, 685.) In *Rex* v. *Vice Chancellor of Cambridge*, (13 Burr, 1661,) Mr. Justice Wilmot said: "It is the *concurrence* and *acceptance* of the University that gives the *force* to the charter of the Crown." In *State* v. Dawson, (16 Ind., 41,) the Court said: "The simple enactment of the charter did not create the corporation. It required an act, on the part of the persons named in the charter, to do that, viz.: acceptance of the charter enacted. The grant of the charter was but an *offer* on the part of the State; a consent that the parties named might become a corporation by accepting the charter offered."

The grant of the United States was, therefore, not complete and effective to vest the corporate franchise, at the time of the transactions relied on in the bill, and there was no association, with the color of capacity, or authority to act as a corporation, or to acquire property as such.

2. It is true it has been held that where there is a corporation *de facto*, with no want of legislative power to its due and legal existence, and the questions suggested are only whether there has been exact regularity and strict compliance with the law under which the corporation was actually organized, those who participated in its formation and business may be estopped to deny the existence of the corporation.

As was said in *Heaston* v. *The Railroad Company*, (16 Ind., 279,) "a *de facto* corporation, that by regularity of organization might be one *de jure*, can sue and be sued. And the person who contracts with such corporation, while it is acting under its *de facto* organization, who contracts with it as an organized corporation, is estopped to deny its *de*

facto organization at the date of the contract." And this is the extent of the ruling of this Court in Comm. *v.* Bolles, (94 U. S., 106.) But here there was no *de facto* organization, or *de facto* corporation; the case was simply that of Humphreys and Close, doing business under the name of The Glenwood Cemetery Company, and selling burial lots in copartnership.

A man may hold himself out as a member of a partnership, or a set of men may hold themselves out as partners, with a similar result; but not so of a man, or a set of men, assuming corporate functions. Unless they constitute, at least, a *de facto* corporation, there can be no such thing, in principle, as an estoppel to them to deny an incorporation.

It has been held essential, in order to establish the existence of a contract with a corporation, to show that the corporation was in existence, at least, *de facto*, at the time the contract was made. (*White* v. *Campbell*, 5 Humph., 38.)

In *Harriman* v. *Southam*, (16 Ind., 190,) there was a conveyance of land by Harriman to the "*Fort Wayne and Southern Railroad Company*" for stock. The land was sold, under a judgment against the company, to Southam. Harriman sued Southam, in ejectment, for the land. The Court held that the grantor was not estopped to deny the existence of the corporation, (for want of due acceptance of the charter, *State* v. *Dawson*, Ib., 41,) and that as there never was a corporation, acting under color of authority, by the name of the Fort Wayne and Southern Railroad Company, the conveyance by Harriman did not divest him of his title. A deed to a person having no existence is generally inoperative, and passes no title to the grantee.

So, in *Carey* v. *The C. & C. R. R. Co.*, (5 Clarke, Iowa, 366,) it was ruled that if the company never had any corporate existence, so as to enable it, in its corporate name, to take and hold property, the fact might be inquired into

in a collateral proceeding. If it never had such existence, the Court said, it could conceive of no direct proceeding which could test the question.

Third.

But whether or not there is an estoppel here in favor of the purchasers of lots, it is manifest that there is no estoppel in favor of the *Government*, which can preclude the owner of this property from denying that the charter was in force for the purpose of amendment, or alteration, by Congress, without his consent.

It was necessary for the Court below to affirm that, by *estoppel*, "the reservation of the right of Congress to alter, modify, or repeal the charter was in force."

This we deny; and we maintain that if the original charter was not, *in truth* and *in fact*, in force, at the time of the Act of February, 1877, that Act has no validity, or effect, as an amendment of the charter, and no suit can be instituted, or maintained, for any purpose under it, in the name of The Greenwood Cemetery, as a corporation.

The principle laid down by this Court in *Ketchum* v. *Duncan*, (96 U. S., 666,) is strictly applicable here.

Mr. Justice Strong there said: "An estoppel *in pais* does not operate in favor of everybody. It operates *only* in favor of a person who has been misled to his injury, and he only can set it up."

How was the Government injured by Close's declarations to the purchasers of lots that the charter was in force, and how can the Government take advantage of those representations as against the established *fact* that the parties to whom it offered the charter did not choose to accept it, or make any contract whatever with it?

The principle is well settled, that only those to whom the representation was made, or was intended to influence,

and their privies, may take advantage of the estoppel. If the act was *inter alios*, there will be no estoppel. (Regina *v.* Ambergate Ry. Co., 1 Ell. & B., 372.)

A charter is a mere offer of corporate franchises, which becomes a contract with the State only upon its acceptance. Part of the contract, when the charter is accepted, is that the State may alter, or modify, the charter. If there was no such contract, if the charter here never had the force of an executed contract, where did Congress get its power to alter the charter for the benefit of the lot-owners? Congress can amend only an existing charter, which has acquired, by acceptance, express or implied, the full force and effect of an executed contract. There must be an actual acceptance of the charter, express or implied, and not merely a fictitious acceptance, based upon an estoppel, before the right reserved by Congress over the charter can attach to anything.

2. We submit, therefore, that the so-called amendment of the Act of 1854 is no warrant for this suit by the lot-owners, in the name of The Glenwood Cemetery, and that there is no corporation of that name in existence competent to be a party to any suit whatever.

Fourth.

But if it should be held that the defendant, Close, is precluded from denying the legal existence of the supposed corporation, and that it has a right to bring suit under the Act of February, 1877, in the name of The Glenwood Cemetery, we submit that the acts of Humphreys and Close, set forth in the bill, were not effectual to vest the equitable estate, in the land in controversy, or any part of it, in that corporation. And first as to the dedicatory ceremonies in August, 1854.

1. It has been seen that the bill relies upon the ceremonies and exercises, which took place in August, 1854, under the auspices and direction of Humphreys, as constituting a "dedication" of the entire ninety (90) acres to the supposed corporation, which vested the equitable title of the land in that corporation, and constituted Humphreys, as holder of the legal estate, a mere trustee for the corporation, who could be compelled, at any moment, to convey that estate to the alleged equitable owner.

That this transaction is the sole foundation asserted for the right claimed to a conveyance of the legal estate, by Close, appears by the fifth paragraph of the bill, averring that "by *virtue of said dedication* the said Cemetery Company became the actual owner of said premises and Cemetery grounds, and was in possession thereof as such, and that defendant Close was invested with and duly held the legal title *in trust* for said Cemetery corporation." (Rec., p. 3, fol. 4.)

It is true that the bill goes on to speak of the subsequent sales of lots, and the representations made to the purchasers in regard to the existence of the corporation; but these transactions are not relied on, in the bill, as constituting the foundation of the trust asserted, or the right claimed to a conveyance of the legal title to the Cemetery grounds and premises.

It would seem clear, therefore, that as the parties filing this bill were bound to state with *certainty* their title to the relief asked, and the manner in which they claimed to own this land, in order that the defendants might be able to meet the case upon some *definite issue*, if the averment of title, by the force and effect of the ceremony of "dedication," is not supported, the case made by the bill entirely fails. The Court is to pronounce its decree *secundum allegata et probata*. (Story's Equity Pleading, sec. 257.)

Now it will be seen that the Court below, while holding that the ceremonial of dedication, which is set out as the

title of the relief asked, "*had no legal effect whatever*," and could not, alone, "*affect the fee-simple title*," based its decree and opinion upon other acts in which the defendant Close participated, which, it said, "*amounted to the creation of a trust, which the party may be compelled to give effect to.*" (See opinion, Rec., pp. 209, 210.)

But we do not discover that those other acts, and the estoppel which the Court below supposed they created, are relied on, in the bill, as the foundation of the trust asserted.

2. In regard then, in the first place, to the dedicatory proceedings, in August, 1854, before the sale of any lots in the Cemetery, we affirm, with the Court below, that it had no legal effect whatever, and did not divest Close of his ownership of the land, or any part of it, or create any trust for the corporation.

The bill appears to have originated in some vague theory, that the proceeding, at the opening of the Cemetery, operated as a technical dedication of the property to a pious and charitable use, constituting the holder of the legal title a mere trustee for the purpose of the supposed charity.

It is clear, however, that this Cemetery was not a public charitable institution, and that no appropriation of property to its use could have legal effect as a dedication to a public, pious, or charitable use.

Jackson *v.* Phillips, 14 Allen, 539.
McDonald *v.* Mass. Gen'l Hospital, 120 Mass., 435.
Att'y-Gen'l *v.* Federal Street Meeting-House, 3 Gray, 49.
Dexter *v.* Gardner, 7 Allen, 247.

It is also settled, by the highest authority, that to constitute a dedication of land to a public, pious, or charitable use, there must be a *donation* by the owner; some unequivocal act, uniting with the intent to divest himself to some extent of the ownership, or power of control over his property,

and vest an independent and irrevocable interest therein in some other person, or body; and that such religious ceremonies as occurred on the opening of this Cemetery prove nothing in relation to any intended change of title.

Attorney-General *v.* Merrimack Manufacturing Co., 14 Gray, 604–609.

No authority, other than the case last cited, in which the opinion was delivered by Mr. Justice Hoar, is needed to show the absurdity of any pretense that the Government could interfere with this Cemetery as appropriated to a public or charitable use, or that what occurred, at the opening of the Cemetery, in 1854, disclosed an intention to dedicate the property to any other use than that of the owners.

In relation to the dedication of land to the public, for the purposes of a street, or highway, (and the same principle applies to a dedication for a charitable use,) the Court of Appeals of New York said:

"The dedication and acceptance are to be proved or disproved by the acts of the owner, and the circumstances under which the land has been used. The owner's acts and declarations should be deliberate, unequivocal, and decisive, manifesting a positive and unmistakable intention to permanently abandon his property to the specific public use. If they be equivocal, or do not clearly and plainly indicate the intention to abandon the property to the use of the public, they are insufficient to establish a case of dedication."

Holdam *v.* Cold Springs, 21 N. Y., 474.

But it is clear that if the public acquired any rights in this property, they could be enforced, if violated, only through an adjudication in a Court of Equity, by virtue of its jurisdiction in cases of charitable uses and public trusts.

Fifth.

The supposed corporation acquired no title to the land in controversy, by *estoppel*, arising from the *representations* of the defendants to the lot-holders when they purchased their lots.

1. The acts and declarations of the defendant, subsequent to the "dedication," as we have said, appear to constitute the principle, if not the only ground, on which the Court below proceeded in holding that the defendant was obliged to convey the land to the corporation, while finding, at the same time, that he had received no compensation from the corporation, and declaring that he was still entitled to compensation, and to have that judicially determined.

Estoppel, involving a divestiture of title to real estate in favor of a party, (the corporation,) who knew all the facts, to whom no representations were made, who gave no consideration, and who was in no manner misled!

There can be no estoppel in such a case. There was no *privity* between the lot-holders and the corporation, in respect to the land not included in their purchases. What occurred between the defendants and the lot-holders was, so far as *that* land is concerned, *res inter alios acta*, and, therefore, not the basis of an estoppel in favor of the corporation.

The corporation cannot claim an estoppel which is personal, and of which only the person misled to his hurt can avail himself.

Ketchum *v.* Duncan, 96 U. S., 666.

2. This view is met in the opinion below by the suggestion that the corporation and the lot-holders were one; that the corporation is their "organ, representative, and agent," and as such entitled to the benefit of the equitable estoppel. This is, however, a mistake. There was no such relation between the lot-holders and the corporation, under

the charter of 1854, as respects the general property of the company.

The lot-holders were mere purchasers from the corporation. They had no proprietary interest in any land included in the Cemetery, except their own lots, and even as to these, they were under the government of the corporation. The corporation was the lord paramount, and not the agent of the lot-holders.

The Court below says: "It was held out to the lot-holders that the Cemetery should be forever under the protection of a perpetual *corporation*, charged with the duty of laying out and ornamenting the grounds, capable of receiving gifts and bequests, and empowered to make by-laws for the regulation of the affairs of the corporation. This was not a mere graveyard in which each lot-holder acquired a piece of ground in which to bury his dead," &c. (Opinion, Rec., p. 210.)

But suppose it was held out to the lot-holders that the Cemetery should be forever under the protection of a perpetual corporation, the corporation was merely a fictitious entity, which might consist of a single proprietor, and, so far as the lot-holders were concerned, it could make no possible difference whether such proprietor managed the concern in his corporate capacity, as the sole owner of the 2,000 shares of stock authorized to be issued, or in his individual capacity as the private owner of the land.

The charter of 1854 provided for a private proprietary corporation, in which the governing power was to reside in the proprietors, or proprietor, of the land, who were or was entitled to all the shares of stock that they or he might determine to issue, under the sixth section of the Act.

The owners of the stock were to appoint the managers, and the managers were to appoint all necessary officers, to lay out, sell, or dispose of burial lots, and to make such by-laws, rules, and regulations as they deemed proper for con-

ducting the affairs of the corporation, for the government of the lot-holders, and visitors to the Cemetery.

If the stock were concentrated in the hands of one proprietor, *he* would constitute the corporation, and the official managers would be, in fact, *his* agents, though nominally the agents of the fictitious body, called the corporation.

If it was held out to the lot-holders, as stated by the Court below, that the Cemetery should be forever "under the protection of a perpetual corporation," the possibility and the probability were held out to them, also, of this perpetual corporation consisting (as it did consist, if there was one) of a single individual, named Joseph B. Close, who, as sole original proprietor, and sole stockholder, would manage and govern the Cemetery, and all it affairs, precisely as if there were no "perpetual corporation" in the case.

If the lot-holders, when they purchased in the Cemetery, stipulated for a corporation to govern the Cemetery, and for an ownership of the grounds, by a corporation, they stipulated, likewise, (for they saw and knew what the charter contained,) for the government of the corporation by one individual, and the real ownership of all the property of the corporation by that individual, and for this government and this ownership by Joseph B. Close, who alone bought and paid for the Cemetery grounds and the property adjoining them.

It is impossible to perceive, therefore, how the lot-holders were misled to their *injury* by the representations of the defendant that the Glenwood Cemetery Company was a corporation, and that it was the owner of this property.

They could derive no benefit from the administration of the property by a corporation governed and managed by the defendant, that they would not receive from the administration of the property without the interposition of a corporation between them and the Cemetery, and they could sustain no injury by the management of the Ceme-

tery by the defendant, as the owner of the property and the principal in the business, that they would not suffer through his government of the Cemetery and his conduct of the business, connected with it, by means of an organized corporation.

It seems clear, therefore, that, in no *legal* sense, were the representations in regard to the corporation, and its ownership of the land, representations of *material* facts, and that justice does not require that the defendant be estopped from denying the corporate ownership of the property.

As we have said, the lot-holders had full knowledge of the contents of the charter when they bought their lots, and they had also record notice of the fact that the title of the land was in Joseph B. Close, and had never been conveyed to the company, and they might easily have ascertained, upon inquiry, that the corporation had never been organized, and that the charter had never been accepted.

The charter may have been an improvident and an unwise one for Congress to grant, but it was equally improvident and unwise for the lot-holders to buy in the Cemetery, if they deemed it important that it should be managed by a corporation not wholly under the control of the proprietors of the land.

Sixth.

But if it should be held that Close was bound in equity to convey the land to the supposed corporation, under the Act of 1854, before the passage of the so-called amendatory Act of February, 1877, we submit that the latter Act operates as a *repeal* of the original act of 1854, and provides for the constitution of another and different corporation from that authorized by the Act of 1854, and that the defendant cannot be required to convey the property to the new corporation.

1. Congress, by the Act of 1854, reserved the right to *alter, modify, or repeal it.*

In the anxiety of the lot-holders to grasp at property to which they have no right, and to punish the defendant for the wrong they supposed he had inflicted upon them, they have, as we think, procured a *repeal*, and not an alteration, of the original charter, and a dissolution of whatever corporation existed under that charter.

If any corporation exists, under the so-called amendatory Act of 1877, it is not the same corporation as that constituted by the Act of 1854, and it possesses none of the rights of the latter corporation. It consequently has no interest in this property, and no right to possess or control it.

The defendant has never given his consent to the change effected in the original charter by the Act of 1877, and the alternative is that any corporation, under the act of 1854, went out of existence by repeal of that Act.

It is quite possible that Congress did not intend that the Act of 1877 should go into effect, without the consent of the proprietor, manifested by the appointment of two trustees; but that is immaterial. If the Act of 1877 was not to operate until the consent of the proprietor was thus given, it has never gone into operation, and no corporation exists under it. If the Act of 1877 was to go into effect, whether the proprietor consented or not, and a corporation has been organized under it, the corporation under the Act of 1854 went out of existence on the passage of the Act of 1877.

2. That the Act of February, 1877, repeals the Act of 1854, and provides a different corporation composed of the *lot-holders*, seems to be plain upon the face of it. It is merely a colorable amendment of the Act of 1854, which can operate only as the grant of a new charter, and of

new franchises, for a different corporation from that contemplated by the Act of 1854.

Whether or not an enactment of the Legislature shall operate as a repeal, or alteration of a charter, where the power to repeal or alter was reserved, is wholly a question of intention, to be ascertained as in cases of other legislative enactments.

"The intention to repeal is sufficiently manifested when the provisions of the two enactments are so inconsistent that they cannot stand together."

State *v.* Com'rs, 37 N. J. L., 230.

The fifth section of the Act of 1877 provides: "That the words 'the proprietors,' where they occur in the original Act of incorporation hereby amended, shall be interpreted and construed to mean, and shall signify the *proprietors of lots* in said Cemetery, and which is hereby now declared by this amendment to be the true intent and meaning of said words." (Stats. at Large, vol. 19; Record, p. 23, where the Act of 1877 is printed.)

The words "the proprietors" in the Act of 1854, occur in several places in that Act.

The Act is entitled "*An Act to incorporate* THE PROPRIETORS of the Glenwood Cemetery."

If, for "*the proprietors,*" in the title of the Act, we substitute "*the proprietors of lots,*" we have the Act of 1854, entitled "An Act to incorporate THE PROPRIETORS OF LOTS of the Glenwood Cemetery."

The "proprietors of lots" are, therefore, the intended corporators under the Act of 1877; the corporate franchise is thus *expressly* taken from the original proprietors, and vested in the *proprietors of lots*, who, by the Act of 1877, are to constitute the corporation.

The third section of the Act of 1854 provides for the division of the stock among "the proprietors."

Substitute for these words, in that section, "*proprietors of lots*," and we have the provision that the capital stock shall be divided "*among the proprietors of lots*, according to their respective interests."

The lot-holders plainly intended, therefore, when they obtained this "amendment," to appropriate to themselves the *stock* of the corporation, and make themselves stockholders in the place and stead of the original proprietors.

Nothing more than this is necessary to show that the corporation intended, by the Act of 1877, consists of the lot-holders, to the exclusion of the defendant.

It is a new and different corporation from that contemplated by the Act of 1854, and does not succeed to any of the rights of property of the former corporation.

The corporation, if any, existing under the Act of 1854, being thus dissolved, by the repeal of that Act, by the Act of 1877, its rights of property revert to the original donor the defendant.

Bacon *v.* Robertson, 18 How., 480.
Lum *v.* Robertson, 6 Wall., 277.

Congress, of course, had no right to give the proprietors of lots, or any corporation composed of them, the property which may have belonged to the corporation under the Act of 1854, or the original proprietors, as members of that corporation.

3. Independently of the express substitution of the lot-owners, for the original proprietors, as members of the new corporation, it is plain, from the whole scheme of the Act of 1877, that the original proprietor was intended to be reduced to the condition of a mere *creditor*, to the extent of one-fourth of the proceeds of the sales of lots. The government of the corporation is placed in the hands of the lot-holders, through their three trustees, and three-fourths of the proceeds of the property go into the hands of the lot-

holders for the purposes of the Cemetery. These moneys are to be disbursed by them, with no accountability to any one for their acts. The only claim and right of the owner of the land is to one-fourth of the proceeds, and in respect to that, he is reduced, as we have said, to a condition of a mere creditor of the new company of the lot-holders.

The whole scheme is, of course, grossly unconstitutional and ineffectual; but, taking it as it stands, the design and purpose of it were to oust the former corporation, not only from its franchise, but its property, and place them in the hands of a new corporation, and it thus operates as a repeal, and not an amendment, of the charter of 1854.

Seventh.

If it should be held, however, contrary to the foregoing argument, that the Act of February, 1877, is to be construed as an *alteration*, and not as a repeal, of the Act of 1854, we submit that the Act is *unconstitutional*, as not the exercise of a power properly legislative, and as depriving the defendant of his property without due process of law, and taking private property for public use without just compensation. And the defendant cannot be compelled to subject his property to the control and disposition decreed by that Act.

1. The defendant, Close, stands in no worse position, in respect to the power of Congress over this property, than he would be in if the scheme contemplated by the Act of 1854 had been carried out, and he had received the value of the land in the stock of the company, as provided by the sixth section of the Act. If the charter is to be regarded as having gone into effect, and the title of the property is to be deemed to have been equitably transferred to the corporation, Close must be treated, in equity, as the sole

stockholder of the concern, and vested with all the property rights of such a stockholder in the Cemetery grounds ——— remises.

It is well settled that though, in contemplation of law, the property and rights of an incorporated association belong to the united association, acting in the corporate name, the stockholders are, in equity, the *real* beneficial owners, and the corporate body is merely their representative, or trustee.

Bacon *v.* Robertson, 18 How., 486.
Sawyer *v.* Hoag, 17 Wall., 623.

Mr. Justice Blackburn, in Taylor *v.* Chichester, &c., Ry. Co., (L. R., 2 Exch., 378,) designated the stockholders in a railway company as "*in substance partners in a trading corporation*, the management of which is entrusted to the body corporate."

It is clear, therefore, that, in any view, the defendant is the real owner of this property; that he cannot be deprived of it without due process of law; and it cannot be appropriated by the Government without just compensation.

2. It is equally clear that there is nothing in the nature and character of the enterprise for which this property was purchased, and to promote which this charter was granted, from which Congress derived the power to take the property devoted to that enterprise from out of the hands of the legal or equitable owner, and place it under the absolute control of the agents of the lot-holders, much less to deprive him of three-fourths of the proceeds of the property, as decreed in the Act of February, 1877.

The property was not "clothed with a public interest," or with a "public right," or "devoted to a public use," nor did the owner, whether a corporation, or an individual, pursue a "public employment," or exercise any "sort of public office" in connection with the property, in the sense

in which those terms are used by this Court, in its decisions, so as to enable Congress, under its general legislative power, to treat it as property which had ceased to be "*juris privati* only."

But if the Cemetery had been established for public uses, and it could be regarded, like a railroad, turnpike, ferry, or canal, as *publici juris*, and, therefore, subject to regulation, to some extent, by the State, Congress would have had no power to take the property from out of the hands of its private proprietors, and direct the application of three-fourths of the proceeds to the improvement of the Cemetery.

This would not be *legislation*. It would constitute an exercise of judicial power. It is not a legislative power to transfer property from an individual, or corporation, to another, or to the public.

Mr. Webster, in the *Dartmouth College Case*, declared the legislation there involved unconstitutional:

"Because those acts are not the exercise of a power properly legislative. Their object and effect is *to take away from one rights, property, and franchises, and to grant them to another*. This is not the exercise of a legislative power. To justify the taking away of vested rights, there must be a forfeiture, *to adjudge upon and decree which is the proper province of the judiciary*."

This so-called amendment of 1877 does that very thing in respect to the land of this Cemetery, and the franchises deemed connected with it under the charter of 1854. It takes them away from the proprietors, and gives them to the lot-holders, without compensation, arbitrarily, unjustly, and oppressively, and in no sense, therefore, can it be deemed "due process of law." (Bradley, J.—Davidson *v.* New Orleans, 96 U. S., 107.)

Congress never attempted such legislation as this, even in regard to quasi-public corporations, of its own creation, for governmental purposes, exercising public franchises,

and holding their property, as such corporations do, as a trust for the public, and which, even as respects the property of such institutions, would be nothing short of confiscation.

If the law should be defended as an exercise of a supposed visitatorial power of the Government, the answer is that power is exercisable only in the cases of eleemosynary corporations, and is *judicial*, and *not* legislative. (2 Kent, 303; U. S. *v.* Union Pacific R. R., 98 U. S., 618.)

3. Nor can the Act of 1877 be defended as a lawful exercise of the power of Congress to alter or modify the charter.

The recent elaborate discussion, by this Court, in the *Sinking Fund Cases* (99 U. S.), of the extent and limit of such a power in a charter granted by Congress, renders observation, on this subject, almost unnecessary.

It is supposed that the decision in those cases, in regard to the charter of the great Pacific Railroads, contains no warrant for the legislation now in question.

The question there was whether Congress had power to enact a law compelling those companies to set aside a portion of their current earnings as a sinking fund for the purpose of meeting a very large mortgage indebtedness to the United States, created under an Act of Congress, and the reduction of which was important to the welfare of the companies themselves, and the interests of its stockholders, and their creditors.

The Chief Justice there said:

"While stockholders are entitled to receive all dividends that may legitimately be paid out of the current net income, their claims on the property of the corporation are always subordinate to those of creditors. The property of a corporation constitutes the fund from which its debts are to be paid, and if the officers improperly attempt to divert this fund from its legitimate uses, justice requires that they should in some way be restricted. A Court of Equity would do this if called upon in an appropriate manner;

and it needs no argument to show that a legislative regulation which requires no more of the corporation than a Court would compel it to do without legislation, is not unreasonable. Such a regulation, instead of being destructive in its character, would be eminently conservative. Railroads are a peculiar species of property, and railroad corporations are in some respects peculiar corporations.

"We think the legislation complained of may be sustained on the ground that it is a reasonable regulation of the administration of the affairs of the corporation, and promotive of the interests of the public and the corporators. It takes nothing from the corporation, or the stockholders, which actually belongs to them. It oppresses no one and inflicts no wrong. It simply gives further assurance of the continued solvency and prosperity of a corporation in which the public are so largely interested, and adds another guaranty to the permanent and lasting value of its vast amount of securities."

Without further citation, it is obvious that the nature of the corporations, in that case, as companies whose welfare was a matter of general public and national concern, was an important consideration in giving effect to the legislation there in question, and that the declarations of the Court, as to the object, operation, and effect of that legislation, sharply distinguish it from the legislation here involved.

In *Sawyer* v. *Hoag*, (17 Wall., 623,) Mr. Justice Miller said:

"It is very true that, by the power of the Legislature, there is created in all acts of incorporation, a legal entity. But, after all, this artificial body is but the representative of its stockholders, and exists mainly for their benefit, and is governed and controlled by them through the officers whom they elect. And the *interest* and *power of legal control* of each shareholder is in *exact proportion to the amount of his stock*."

The chartered contract by which each stockholder agrees to contribute his proportionate share of the capital of the

association, and each, in return, becomes entitled to participate, exclusively of all others, in the management and profits of the corporate affairs, cannot be abrogated, or varied, under any power reserved to alter the "charter."

The Act of 1877 treats this property, alleged to belong to a private proprietary corporation, and purchased by private funds before the charter had any existence, as *publici juris*, as outside of the category of property held in private right, and as the lawful subject of public appropriation and sequestration, takes it away from its owner, without judicial decree, turns it over to be administered upon by the lot-owners for their benefit, and actually deprives the owner of three-fourths of its value, without a dollar of compensation. *Magna Charta* and the Constitution alike prohibit such legislation.

It seems to be like the extreme case put by Chief Justice Shaw to show the invalidity of such oppressive and unjust action on the part of the Legislature.

In *Comm.* v. *Essex Co.*, (13 Gray, 253,) the Chief Justice said: "Suppose authority has been given by law to a railroad corporation to purchase a lot of land, and hold it for purposes connected with its business, and they purchase such a lot from a third person, could the Legislature prohibit the company from holding it? If so, in whom would it vest? Or could the Legislature direct it to revert to the grantor, or escheat to the public? Or how otherwise? Where, under a power in a charter, rights have been acquired and become vested, no amendment or alteration of the charter can take away the property or rights which have become vested under a legitimate exercise of the powers granted."

The same doctrine is clearly asserted in *Railroad Company* v. *Maine*, (96 U. S., 499,) and is assumed to be unquestionable in the several opinions in the *Sinking Fund Cases*.

In *Sage* v. *Dillon*, (15 B. Monroe, 340,) the Court held, that a reservation, in a charter, to alter, repeal, or amend, does not imply the power to alter, or change, the vested rights acquired by the corporators under the charter, and to add new parties, and managers, without the consent of the corporators.

In that case the Legislature incorporated a Theological Institute, with seven trustees. The amendment of the charter, which was held invalid, appointed sixteen additional trustees.

The Court said:

"In our opinion the act of the Legislature, creating sixteen new trustees, without the consent of the Board, is not an act coming within the scope of the power reserved in the Act. It is an act not changing or amending the mode or manner in which the trustees to whom had been given, by the founders of the charity, the supervision and visitorial power of the institute, but it is an act by which this supervision and visitorial power is substantially taken away and conferred upon others. True, the Legislature may, by virtue of the reservation, repeal or destroy; but the power to destroy does not imply a right to cripple, or to maim."

In *Allen* v. *McKean*, (1 Sumn., 277,) Judge Story affirmed the same doctrine, in reference to the charter of Bowdoin College, and declared that an authority to alter or modify the powers of the trustees of the founder, could not be construed into an authority to take them away from *his* trustees, and confer the same powers on other persons.

The same principle was declared in *St. Mary's Church Case*, (7 S. & R., 562.)

In *New Haven & Derby R. R. Co.* v. *Chapman*, (38 Conn., 70,) the Court said:

"The power thus reserved is in terms absolute, but it is not an unlimited power. Like all other legislative powers, it is subject to this important limitation, viz.: it shall not be so exercised as to impair the obligation of a contract, or to destroy vested rights."

It also said:

"The powers reserved will authorize subsequent legislation on the same subject, *so long as the owners of the stock retain the control of the corporation*, and are all placed upon equal and fair terms."

Mr. Justice Cooley, in *Detroit* v. *Detroit & Howell P. R. Co.*, (43 Mich., 147,) decided since the *Sinking Fund Cases*, said:

"The reservation of the right to amend gives the State the right to do what it would be admissible for any constitutional government to do when not thus restrained, but it could not do what would be inconsistent with constitutional principles. And it cannot be necessary, at this day, to enter upon a discussion in denial of the right of the Government to take from either individuals, or corporations, any property which they may rightfully have acquired. It is immaterial in what way the property was lawfully acquired; whether by labor in the ordinary avocations of life, by gift or descent, or by making profitable use of a franchise granted by the State: it is enough that it has become private property, and it is then protected by the law of the land."

In that case the Legislature attempted to deprive a Plank Road Company of the privilege of taking tolls for travel and traffic on a part of its road. The Court said, if the Legislature might do this in respect to one part of the road, it might do so in respect to any other part, and thus a single section of a statute might annihilate the property of the company altogether. "*A statute which could have this effect would not be a statute to amend franchises, but a statute to confiscate property;* it would not be a statute of regulation, but of spoliation."

4. We submit, therefore, that the act of 1877, which takes the management and property of the supposed corporation out of the hands of the defendant, the real owner,

and arbitrarily appropriates three-fourths of the receipts from sales of lots to the so-called "improvement of the cemetery," and reduces the defendant to the condition of a mere creditor in respect to the residue, is not a valid "amendment" of the charter, but is a direct abrogation of the chartered contract by which the defendant became vested with the right to manage the affairs of the corporation, dispose of its property for the authorized purposes of the charter, receive the proceeds, and own and enjoy the profits, and a plain taking of private property without "due process of law," and without "just compensation," within the spirit, if not the letter, of the constitutional provisions.

Eighth.

It cannot be pretended that the Act of 1877 makes any valid provision for compensation for the property, rights, and franchises taken by the Act.

On the subject of the compensation, which the Court below recognized as due to the defendant, there is a strange inconsistency and conflict between its opinion, as delivered by Mr. Justice Cox, and the decree entered on that opinion.

The opinion declared that the defendant was "still entitled to say, that, as owner of the land, he has not been compensated for it, and to have this *judicially* determined." (Rec., p. 211.)

The decree, however, apparently, treats what is given him by the Act of 1877 as legal compensation "for his title and interest in the property."

It is difficult to see, therefore, how the decree of the Court can be defended, upon the principles of the opinion.

If the opinion is right, the decree, which directs a con-

veyance before and without any judicial ascertainment of the compensation due, is plainly wrong; for it cannot be pretended that the Court below was authorized to decide the amount of the compensation due the defendant, or had any jurisdiction over that subject.

A provision for compensation is an indispensable attendant upon the due and constitutional exercise of the power of depriving an individual of his property.

Gardner *v.* Newburg, 2 Johns. Ch., 168.
Bridge Prop'rs *v.* County Com'rs, 103 Mass., 120.

It is not competent for the State itself to fix the compensation, through the *Legislature*, for this would make it the judge in its own case. (Cooley's Const. Lim., 563.)

In *Charles River Bridge* v. *Warren Bridge*, (11 Pet., 571,) Mr. Justice McLean said:

"In granting the charter of the Warren Bridge, the Legislature seem to recognize the fact that they were about to appropriate the property of the complainant for public use, as they provide that the new company shall pay annually to the college, on behalf of the old one, £100. By this provision it appears that the Legislature has undertaken to do what a jury of the country *only* could do—assess the amount of compensation to which the complainants are entitled.

"Here, then, is a law which not only takes away the property of the complainant, but provides, to some extent, for their indemnity. The law in this respect does not bind them; and they are entitled to an adequate compensation for the property taken."

As the Act of 1877 makes no provision for determining, according to the principles of the Constitution, the compensation due the defendant for the taking of his rights and property, it is void and of no effect, and defendant cannot be required to convey the land under it. The Act is no better than blank paper. (Bloodgood *v.* R. R. Co., 18 Wend., 9.)

Ninth.

It is respectfully submitted that the decree of the Court below is erroneous, and that it should be reversed, and the case remanded to the Court below with directions to dismiss the bill.

J. HUBLEY ASHTON,
NATHANIEL WILSON,
Of Counsel for Appellants.

APPENDIX.

Act of February, 1877, (19 Stats. at Large, 266.)

An Act to amend an Act incorporating the proprietors of Glenwood Cemetery, approved July twenty-seventh, eighteen hundred and fifty-four.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the above entitled act of incorporation be, and the same is hereby, amended as follows, to wit:

First. The name and title of said corporation shall be The Glenwood Cemetery, and in that corporate name it shall hereafter sue and be sued as a body politic and corporate, and exercise all the corporate authority and powers conferred upon it, and be subject to all the liabilities and duties imposed under the original act of incorporation aforesaid.

Second. That the affairs, business, and property of the said corporation shall be under the direction, control, and management of a board of five trustees, any three of whom shall constitute a quorum, with full authority to act, which board of trustees shall be elected annually, three by the proprietors of lots in said Cemetery, and two by the original proprietors; and the trustees shall select and appoint, from their own board, a president, secretary, and treasurer, and also, from their own board or otherwise, a superintendent, to have the immediate custody, supervision, and management of the Cemetery, under the rules and regulations of the board. The trustees shall have authority to fill temporary vacancies occurring in their board, and shall hold their offices until their successors are elected and qualified.

Third. The annual meeting of the proprietors of lots shall be held in the city of Washington on the first Monday of June of every year, the place and hour of assembling to be specified in a public notice previously given by the trustees elected by the lot-proprietors. At such meeting there shall be at least twenty lot-proprietors to constitute a quorum to transact business, either in person or by

proxy, although a less number may adjourn the meeting from day to day until a quorum be present. In the election of the trustees at such meeting, each lot-proprietor shall be entitled to one vote for each lot owned by him in good faith, upon which a burial has been made. The two trustees of the board which are to be elected by the original proprietors shall be elected on the first Monday in June of every year, in such manner as said original proprietors shall determine.

Fourth. The affairs of the Cemetery shall be so conducted, under the authority of the board of trustees, as to secure the equitable rights of each and every person having in any way any vested interest in the said Cemetery. And the Cemetery shall be amenable and subject to the jurisdiction of the Equity Courts of the District of Columbia for any disregard of the rights or interests of any person whatsoever. And any person who may refuse peaceable possession of said grounds to said trustees, or obstruct or disturb such possession in said trustees for said purposes of burial, shall forfeit and pay, as a penalty therefor, the sum of one hundred dollars for each and every day of such refusal and disturbance, to be collected in an action of debt, in the name of the Cemetery corporation; and the sum that may be recovered shall be appropriated for the improvement of the Cemetery grounds.

Fifth. That the words "the proprietors," when they occur in the original act of incorporation hereby amended, shall be interpreted and construed to mean and shall signify the proprietors of lots in said Cemetery, and which is hereby now declared by this amendment to be the true intent and meaning of said words.

Sixth. That from the receipts from the sale of lots hereafter sold, of the ground now dedicated for burial purposes, there shall be paid, on the first Monday in June in each year, by the board of trustees, to the original proprietors, one-fourth of the gross receipts arising from such sales, the remainder to be devoted to the improvement and maintenance of the Cemetery.

Seventh. That within ten days after the approval of this act, any five proprietors of lots in said Cemetery may call a meeting by giving two days' notice thereof in any newspaper published in the city of Washington, at which meeting the said proprietors shall proceed, as provided in sections

two and three of this act, to elect a board of trustees, who shall hold office until their successors are duly elected and qualified under the annual election to be held on the first Monday in June following.

SAM. J. RANDALL,
Speaker of the House of Representatives.
T. W. FERRY,
President of the Senate pro tempore.

Received by the President February 16, 1877.

[NOTE BY THE DEPARTMENT OF STATE.—The foregoing act having been presented to the President of the United States for his approval, and not having been returned by him to the House of Congress in which it originated within the time prescribed by the Constitution of the United States, has become a law without his approval.]

Extract from Congressional Record, 44th Congress, 2d Session, vol. 5, part 1, p. 593.

The PRESIDENT *pro tempore*. The Senate resumes as in Committee of the Whole the consideration of the bill called up by the Senator from Kansas, being the bill (H. R. No. 3741) amending an act incorporating the proprietors of Glenwood Cemetery. The pending question is on the amendment submitted by the Senator from Ohio, [Mr. SHERMAN.]

Mr. INGALLS. Mr. President, the amendment proposed by the Senator from Ohio to the bill now under consideration involves a very interesting legal proposition to which I desire particularly to call the attention of the lawyers of the Senate.

Twenty-three years ago a number of gentlemen, residents of the city of New York, purchased a tract of ground, embracing ninety acres, adjacent to the city of Washington. They obtained an act of incorporation from Congress authorizing them to lay off thirty acres of this property into cemetery lots and dispose of them for burial purposes. Out of the tract of ninety acres which they secured they platted and laid off and embellished and decorated the portion required by the act of incorporation, leaving the re-

mainder unimproved to this day, it being still used for agricultural purposes; at least no part of it is used for the purpose contemplated by the act of incorporation. A large number of citizens of Washington have from time to time become proprietors of lots in the thirty acres that have since been known as Glenwood Cemetery, and which has been consecrated by the interment of their friends and relatives. More than two thousand interments have been made, I am informed, and sales are continually being made. A difficulty has arisen between the proprietors of these lots and the original owners of the land in relation to the disposition of the proceeds arising from the sales of the lots, and a further difficulty in regard to the regulations that have been imposed by the original corporators upon those who have subsequently purchased lots and become proprietors.

It is claimed on the one hand that the act of the original corporators, laying out the thirty acres for a cemetery, constituted what is called a dedication of the whole ninety acres to a public or charitable use; that to that extent these corporators became divested of their title to the property that they had bought and paid for, which thereby became vested either in the lot proprietors or in the public; and, acting upon that theory, the amendment proposed by the Senator from Ohio has been offered.

It proposes that hereafter the management and control of affairs of the corporation shall be taken out of the hands of those who purchased the land and paid for it; and that the business shall be committed to a board of trustees, "five in number, three of whom shall constitute a quorum, three to be elected annually by the proprietors of the lots, and two by the original proprietors." The Senate will observe that a very large proportion of the original tract of land, the ninety acres, still remains unoccupied as a cemetery; it never has been platted as a burial ground; no lots, no walks, no avennes have been laid out upon it; also that a very large proportion of the thirty acres that were originally designated as a cemetery still remains unsold and unoccupied. The amendment offered by the Senator from Ohio proposes not only to deprive the original proprietors of their interest in the thirty acres that they laid out as a cemetery, but in the sixty acres that have remained as agricultural land, and to invest the whole management of this

corporation in the hands of five trustees, a majority of whom shall be elected by those who own a minority of the property.

I am not prepared to say that this is not right, nor that there was not by the act of these corporators a dedication of this land to a public or charitable use; but, considering it as a legal proposition, I was unable to give it my assent.

It is not agreeable to raise any question of law about a purpose so pious and so sacred as that affecting the interment of the dead. But it has occured to me, from an investigation of the authorities and of the questions that have arisen under similar acts of incorporation, that these parties in buying this land adjoining the town and laying out a portion of it as a cemetery occupied no different relation to the people of this community or to the proprietors of the lots in this cemetery than the owner of a suburban addition would do. In the one case, the lots are occupied by the living; in the other, they are occupied by the dead. And if the Senator from Ohio can show any reason or point to any authority or precedent that authorizes Congress to deprive these parties of the property they have bought and paid for and turn it over bodily into the hands of persons who do not even claim to own it, I shall be very glad to have him do so. It seems to me to be a matter purely of sentiment; that the effort is being made to induce Congress to take this property away from these persons who own it and turn it over to those who do not, because, as they urge, this is an attempt to make money out of the sale of land for a purpose so sacred as the burial of the dead.

It may be a very reprehensible and a very inappropriate thing for an association of gentlemen to endeaver to get gain out of a cemetery; but it is not very unusual or very uncommon; for I believe that there are few cemetery associations in the country that have not been established on the expectation of remuneration from the sales of lots. And when the Senator from Ohio attempts to stigmatize these proprietors because of the fact that they have endeavored to make profit out of the purchase of this land, he is going outside of the authority of law into the realm of sentiment, to say the least.

These trustees, the Senate will observe, are five in number, of whom the lot-proprietors are to have a majority. The

amendment offered by the Senator from Ohio provides "that the original proprietors"—that is, the men who bought the ninety acres of ground—"shall have no representation in said board of trustees until a conveyance shall have been made to the cemetery corporation of the ninety acres of ground now dedicated for the purpose of burial." The fact is that there has been no dedication at all of any portion of this ground to any public use. The formalities necessary to "dedicate" a tract of land to a public use require a public record of its area, dimensions, boundaries, and subdivisions, or some public ceremonial or declaration that will be sufficient to advise the world of the fact. There never has been any dedication in any legal or formal sense of any portion of this land. In no event could it be claimed that there has been any dedication of the sixty acres that were not laid out into lots and paths and avenues.

The amendment proceeds further in the sixth clause to declare—

> That from the receipts from the sale of lots hereafter sold, of the ground now dedicated for burial purposes, there shall be paid, on the first Monday in June in each year, by the board of trustees, to the original proprietors, one-fourth of the gross receipts arising from such sales, the remainder to be devoted to the improvement and maintenance of cemetery.

There is an arbitrary division of the funds arising from the proceeds of the sales of this land, that is based on some principle with which I am not familiar, declaring what proportion of their own money the owners of the land shall receive and what proportion shall be devoted to the uses of persons who own none of it. I hope, therefore, that before this amendment is adopted by the Senate it will receive careful consideration, and that the Senator from Ohio will be able to give some reason other than that which now appears why it should prevail.

I will say before closing that my theory about the subject has been that the rights both of the original proprietors and of the lot-owners are already defined under existing laws. They arise under the act of incorporation, which was passed in 1854; and if the parties are not able to determine what their respective rights are, the most appropriate action for Congress to take would be to repeal the act of incorporation and leave these parties to ascertain their rights in court.

Mr. SHERMAN. Mr. President, the Senator from Kansas seems to forget that we are dealing with a creature of our

own creation, a corporation which has no powers except such as are conferred upon it by law. We are not dealing with private people engaged in a speculation. We are not dealing with the subdividers of a town plat or an addition to a city. We are dealing with people whose sole rights depend upon the language of a law of our own and which is subject to repeal and modification. In the charter which incorporates this Glenwood Cemetery Company I find this provision:

> That it may be lawful for Congress hereafter to alter, amend, modify, or repeal the foregoing act.

And this bill now before us is simply an appeal to Congress to alter, amend, and modify this act so far as to give the proprietors of lots, the persons beneficially interested, for whose benefit this corporation was created, some share in its management. That is all there is in the proposition I offer. Every provision of the amendment is fair, honest, and right. These proprietors never paid one single cent on their stock; they never invested one single dollar of money. Upon the blind phraseology of an act of incorporation, passed probably without any close examination, the last four of twelve corporators were made a body corporate with certain powers, but with a right reserved to Congress to change or modify those powers.

These four men then bought on credit some valuable property near the city of Washington, some sixty, eighty, or ninety acres of land. They paid for that out of the contribution of the proprietors. They sold the lots and the capital stock was paid by the proprietors of the lots, and all the money put into this corporation was put in by the owners of the lots; and yet these four non-resident persons, who, under the peculiar phraseology of this act of Congress, called themselves the proprietors of the cemetery, who have invested no money, have governed without an election, from that day to this, this corporation, created by us and subject to our control. They have done it for the purpose of making money. That is a laudable purpose, and I have no objection to it; but these four men without investing money have received from the lot-proprietors twice the cost of the land, have paid themselves dividends on the stock they created without paying any money on it, and now seek to deny the power of Congress to modify or change this law.

Mr. President, there is no question of legal rights or vested rights involved in this matter; we are dealing with a corporation of our creation, and if these people have any vested rights or any property rights, the amendment itself provides for their protection. I find in section 4 of the amendment this provision:

> Fourth. The affairs of the cemetery shall be so conducted, under the authority of the board of trustees, as to secure the equitable rights of each and every person having in any way any vested interest in the said cemetery. And the cemetery shall be amenable and subject to the jurisdiction of the equity courts of the District of Columbia for any disregard of the rights or interests of any person whatsoever.

So that if these particular persons who claim to have property rights have any vested rights, here is ample provision for their protection.

Now, Mr. President; the question is whether Congress, having improvidently created an artificial body called a corporation, under a false cloak, a false color, with apparently the humane and benevolent purpose of burying the dead, will allow the exercise of the corporate powers that have been complained of by these people to be continued to the injury of the lot-owners. That is what Congress is to determine, the express right to amend or modify this charter having been reserved.

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17-466

Supreme Court of the United States.

October Term, 1882.

JOSEPH B. CLOSE AND GEORGE CLENDENNIN, APPELLANTS,
vs.
THE GLENWOOD CEMETERY. } No. 108.

CHARLES BORCHERLING, APPELLANT,
vs.
THE GLENWOOD CEMETERY. } No. 832.

Appeals from the Supreme Court of the District of Columbia.

Supplemental Brief for CLOSE and CLENDENNIN, Appellants.

The Appellant, Charles Borcherling, in No. 832 complains, in the Brief filed for him, of the action of the Court below, at Special Term, granting the motion to take his so-called cross-bill from the files, with leave to him "to apply for leave to file a cross-bill, as he may be advised." (Rec., p. 86.)

No application was ever made by him for this leave;

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No application was ever made by him for this leave;

and it is supposed that, for this reason alone, he is in no position to complain, in this Court, of the action of the Equity Court; especially as it will not be pretended that the validity of that order was contested by him at the hearing in the General Term.

Nor was any proof taken by him, in support of the answer interposed by him, though the plaintiff put the facts in that answer in issue by the replication filed. The Court below had the right, and this Court has the right, therefore, to assume that Borcherling abandoned his idea of attempting to pursue his claim by way of cross-bill in this suit, and for that reason failed to apply for leave to file such a bill in this jurisdiction.

And that this was no doubt the case, appears by the fact which it is thought proper to state, and which the counsel for Mr. Borcherling should, perhaps, have mentioned, that after the order complained of in regard to his cross-bill, Mr. Borcherling, instead of asking leave to file a cross-bill, instituted in the name of Ellen M. Close an original suit against these parties in the Equity Court of this District, which is now pending.

The present Record shows, furthermore, that while the decree of the Court below was entered *June* 2, 1879, and Mr. Close appealed to this Court on June 16, 1879, no appeal was taken by Mr. Borcherling until *May* 24, 1881, (Rec., p. 216,) and his transcript was not filed in this Court until *May* 6, 1882, which, we believe, was the very day the Court adjourned for the term.

The Receiver does not appear, therefore, to have been very diligent in the prosecution of his "rights as a citizen."

Upon the merits, however, of the question discussed in the Brief for the Receiver, we submit that the Equity Court below had the right to order his so-called cross-bill to be

taken from the files, and put him to ask leave to file a cross-bill.

The remedy by which persons who are not parties to a cause, may sometimes, under extraordinary circumstances, be allowed, by the Court, to make themselves parties, is undoubtedly an extreme one.

In *Bronson* v. *La Crosse Railroad Co.*, (2 Wall., 302,) this Court, speaking of the admission of stockholders, in a suit against a corporation, as parties to the suit, for the purpose of protecting their own interests in the corporation against unfounded claims, said this remedy "*is an extreme one, and should be admitted by the Court with hesitation and caution.*"

This language was cited and approved by the Chief Justice, in delivering the opinion of the Court in *Ex parte Cutting*, (94 U. S., 22,) where he said, "*it is always addressed to the sound judicial discretion of the Court.*"

The general principle of common law and chancery procedure, is, that suits are commenced, prosecuted, and defended by parties to the record in their own names, and the intervention of third persons, not parties, is unknown.

In *Shields* v. *Barrow*, (17 How., 145,) a case referred to by Mr. Justice Miller as a very able and satisfactory discussion of the subject of parties, (6 Wall., 280,) Mr. Justice Curtis said:

"New parties cannot be introduced into a cause by a cross-bill. *If the plaintiff desires to make new parties, he amends his bill and makes them. If the interests of the defendant require their presence, he takes the objection of non-joinder, and the complainant is forced to amend, or his bill is dismissed. If at the hearing the Court finds that an indispensable party is not on the record, it refuses to proceed.* THESE REMEDIES COVER THE WHOLE SUBJECT, *and a cross-bill to make new parties is not only improper and irregular, but wholly unnecessary.*"

Now, Mr. Borcherling, the Receiver, was not only an unnecessary, but an *improper* party, to this suit. He had no such interest in it, or the subject-matter of it, as would

have entitled the plaintiff to make him a *defendant*, and his presence in the case was in no manner necessary for the decision of the question of title to this property presented by the bill.

When it was found that he kindly proposed to give away our rights to the alleged Cemetery Company, we objected to his appearance in the suit, and the *ex parte* order admitting him as a party.

But whether or not he was properly admitted as a defendant in the cause, he certainly possessed no right, upon any showing made in the papers filed by him in the Equity Court, to prosecute in this jurisdiction a cross-bill as receiver of the State Court, in respect to this property.

Considered as a party admitted, in the exercise of the sound discretion of the Court, to *defend* by *answer* against the claim in the bill, he had no right to file a cross-bill without a motion for leave to do so; and this, we suppose, is the principle indicated by the decision of the Court, in *Bronson* v. *La Crosse R. R. Co.*, (2 Wall., 303,) where Mr. Justice Nelson said: "Leave was granted to put in the answer, but not to file the (cross)-bill. The filing of it subsequently, therefore, was an irregularity, for which the Court below very properly afterward set it aside."

As the cross-bill, in this case, was filed, by the Receiver, without leave of the Court, it was properly ordered from the files, with leave to him to move to file a cross-bill.

But we respectfully submit, further, upon the question whether or not, Mr. Borcherling, as Receiver, could maintain a bill in this jurisdiction in respect to this property, that the matter is concluded by the decision of this Court in the leading case of *Booth* v. *Clark*, (17 How., 322,) where the whole subject of the extraterritorial rights of Receivers is elaborately discussed by Mr. Justice Wayne in a very able opinion.

The Court, in that case, said:

"Our industry has been tasked unsuccessfully to find a case in which a Receiver has been permitted to sue in a foreign jurisdiction for the property of the debtor. We think that a receiver has never been recognized by a foreign tribunal as an actor in a suit. He has no extra-territorial power of official action." (17 How., 335, 338.)

In *Brigham* v. *Luddington*, (12 Blatch. C. C., 237,) Mr. Justice Woodruff, on the authority of this case, held that a receiver appointed on a judgment creditor's bill in a United States Circuit Court could not file a bill in another Federal Court for the recovery of securities of the judgment debtor, and the application of them in satisfaction of the judgment.

If it is said that Mr. Borcherling, the Receiver, has an assignment from Close, we answer: 1st. That no copy of an assignment is exhibited with the petition on which leave was granted him to become a defendant, nor was any proof of an assignment made in the present case; and, 2nd. That the form of assignment in the decree, appointing Borcherling receiver, shows that it was to be *in trust* for the purposes of the decree for alimony: "To have and to hold the same unto Charles Borcherling, Junior, Receiver, as aforesaid, to be by him disposed of according to the orders of said Court of Chancery made in a certain cause, wherein Ellen M. Close is complainant and Joseph B. Close defendant." (Record, p. 57; also, p. 81.)

As the Equity Court could not recognize him in his official capacity, by virtue of the decree of the State Court, under the doctrine of *Booth* v. *Clark*, it could not recognize him by virtue of such an assignment to him as Receiver as is alleged.

J. Hubley Ashton,
Nathaniel Wilson,
Of Counsel for Joseph B. Close.

17-466

OFFICE SUPREME COURT U. S.
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JAMES H. McKENNEY, Clerk.

THE W. S. SHARP PRINTING CO., 21 West State Street, Trenton, N. J.

UNITED STATES SUPREME COURT.

CHARLES BORCHERLING,

Appellant,

v.

THE GLENWOOD CEMETERY.

Brief for Appellant Charles Borcherling.

Statement.

The "Glenwood Cemetery" brought their suit in equity in the Supreme Court of the District of Columbia, against Joseph B. Close and others, asserting that about ninety acres of land near Washington, the title to which was in or held for said Close, had been dedicated as a cemetery under the name of Glenwood, and praying that he convey the same, according to said dedication, to the plaintiff, a corporation created under act of congress passed July 27th, 1854, and account for the profits of all sales of lots therein since March, 1879, when an organization of said corporation took place under an act passed in February, 1877—and for other relief.

A decree of divorce *a mensa et thoro*, in favor of Ellen M. Close, the wife of said Joseph B. Close, was rendered in chancery of New Jersey July 20th, 1874, (Record, fol. 277,) and on January 29th, 1875, another decree was made in that cause against him for alimony. From this, appeal was taken, but the same was affirmed. (Fol. 191.) This decree not being obeyed, November 3d, 1878, an order of sequestration, &c., was made, (fol. 193,) under which Charles Borcherling, the appellant, was appointed receiver of the personal estate, and of the rents and profits of the real estate of said Joseph B. Close, and he, under this order, executed and delivered to said Charles Borcherling as such receiver, an assignment of "all and sundry his personal estate, wherever situate, and especially all and sundry the capital stock of the Glenwood Cemetery in Washington, D. C., and all profits, dividends or other moneys to him arising therefrom or from any officer thereof, and to all and sundry the rents and profits of his real estate whatsoever and wheresoever,

to have and to hold the same unto said Borcherling, to be by him disposed of according to the order of the Court of Chancery" in said suit. This assignment bears date December 24th, 1875.

Mr. Borcherling, May 25th, 1878, filed his petition in the case of the Glenwood Cemetery *v.* Joseph B. Close and others, in the Supreme Court, D. C., and was admitted as a party defendant therein. The same day he filed his answer (Record, fol. 111,) and May 31st, 1878, he filed a cross-bill, (fol. 117,) in which he prays that the dedication asserted by the corporation be enforced against Close and his assigns as to thirty acres of the ninety claimed; that the corporation be required to issue capital stock to the amount of $100,000 according to its charter, and that it be issued and delivered to him as receiver, to be by him used and enjoyed under the trusts of the receivership—that Close and the superintendent of the cemetery be decreed to account to him for all profits since the date of the assignment, and be restrained from retaining possession of the cemetery grounds against him, and that a receiver or himself be put in possession thereof. To this cross-bill is annexed an exemplified copy of the New Jersey record, under the seal of the Court of Chancery of that state, with a copy of said assignment.

On the 11th day of June, 1878, several motions came up before the Supreme Court of the District of Columbia in said cause. Borcherling moved for an injunction and for possession by himself or a receiver pending the suit, and Close to rescind the order permitting Borcherling to become a defendant, and to take the cross-bill from the files of the court. The court denied the application to rescind, but also denied that of Mr. Borcherling for an injunction and a receiver, and granted Close's notice to take the cross-bill from the files, though giving Borcherling the right to apply for leave to file a cross-bill, as he might be advised.

The plaintiff filed a replication to the answer of Borcherling, as well as that of Close; proof was duly taken, but without notice to Borcherling or his solicitor on either side, and June 2d, 1879, a final decree was rendered. (Fol. 399.)

This decree directs Close, within thirty days, to convey the ninety acres to the cemetery, and then states it to be the opinion of the court that Close is entitled to be compensated for the transfer of his title in said premises as the original proprietor thereof, and that the one-fourth of the gross receipts from sale of burial lots was an equitable adjustment of the rights of Close in the premises, and a reasonable compensation for his title and interest; and it was thereupon decreed that the complainants do annually thereafter pay to Close or his assigns one-fourth part of the gross receipts from sales of burial lots in the ground; the decree, however, to be without prejudice to the rights of Borcherling as receiver as aforesaid.

From this decree, May 24th, 1881, Borcherling took appeal.

On an appeal from a final decree, the whole proceedings come under review.

Buckingham *v.* McLean, 13 How. 150.
Terhune *v.* Colton, 1 Beas. 318.
Crane *v.* De Camp, 7 C. E. Gr. 614.

And the appellant, Charles Borcherling, makes the following points:

I.

The order taking his cross-bill from the files and denying his application for possession through a receiver, and for an injunction against interfering with such possession, was improvident and erroneous, and the same should be reversed.

II.

This being done, and the appellant being thereby restored to his position in the cause, all proceedings since had therein are erroneous, and the final decree falls—or must, under directions here, be amended.

III.

The court below should be directed, pending the suit, to make order appointing a receiver of said cemetery grounds, or otherwise putting the appellant in possession thereof, with full powers to make sale and transfer of burial lots, using the avails, so far as necessary, to improve the grounds and paying any surplus to this appellant for use under his trusts, and restraining Close or any assigns of the legal title from interfering, as prayed.

IV.

But it being necessary, as foundation for said order, to determine—

1. Whether or not any part, and, if any, how much of said ninety acres was legally devoted for burial uses?

2. Whether the act of 1854 created a corporation?

3. The true construction and effect of the amendatory act of 1877, and whether the alterations, if any, made thereby in the original act were within the power of congress?

And the defendant, Close, being estopped from denying the record, an exemplified copy of which was annexed to appellant's cross-bill, or the assignment he made under it.

And the decree being expressly without prejudice to the rights of the appellant as assignee and receiver to the interest of said Close.

This court will review the whole case and render a decree advising the court below what final decree to make therein.

Upon which hypothesis the appellant insists.—

V.

Only thirty acres of said ground were ever dedicated or legally devoted to burial purposes.

VI.

It was the duty of said Close to have conveyed such thirty acres to said Glenwood Cemetery before disposing of any right of burial therein, and this he will be decreed to do, as of that date.

VII.

It was the duty of said corporation to issue to him or his assigns capital stock to the amount of $100,000.

VIII.

Said corporation should be decreed to issue said stock to said Charles Borcherling, as receiver, appointed and authorized under the decrees of chancery of New Jersey,

IX.

The act of congress of 1877 did not alter or repeal the act of 1854, so far as regards the issue of said stock, nor substitute for dividends thereon one-fourth of the gross receipts from sales of lots for burial purposes.

X.

Section fifth of said amendatory act is void.

XI.

If the provision in section sixth was intended as a substitute for dividends, the same was void.

XII.

Said amendatory act diverts vested proprietary rights for private use, and is therefore beyond the power of congress, and void.

It is proposed briefly to discuss these propositions in order.

I.

The order of the court below, taking Borcherling's cross-bill from the files, and denying his application for possession through a receiver, and for an injunction against interfering with such possession, was improvident, and the same should be reversed.

It is understood that the cross-bill was ordered to be taken from the files on the authority of Bronson *v.* La Crosse Railroad, 2 Wall. 303.

But it is respectfully suggested that this decision was misunderstood. In that case the Milwaukee and Minnesota R. R. Co. was a party to the suit. An order *pro confesso* was taken against them. After the time had expired within which the Milwaukee and Minnesota R. R. Co. ought to have answered, but before this order *pro confesso*, one I. S. Rockwell, a stockholder of said com-

pany, presented his petition, charging collusion with plaintiff by the directors thereof, and praying leave to defend on the part of said company. The court ordered that he have leave to "defend in the name of the company to the same extent as said company could do under the rules and practice of the court." Rockwell filed his answer in that way (3 Wall. 286.) One Fleming, another stockholder, afterward petitioned for like leave to answer for the Milwaukee and Minnesota R. R. Co., and that the company might have thirty days to perfect the same and prepare a cross-bill as shall be necessary. The court granted leave "to put in answer in the name of the company." It did *not* grant leave to file any cross-bill. Long after, as it would appear, though the dates are not given of filing their answers, Fleming, without leave first obtained, filed a cross-bill in the name of the company. Motion was made to strike it from the files, because filed without leave of the court, and the court did so. This court, on appeal, held that they were right.

It is not supposed that in this decision this court meant to change the law or practice in relation to cross-bills. They are a species of defence. They must be filed in aid of an answer, and because the defendant needs relief, as well as to defeat the plaintiff. He can file a cross-bill as a right, provided he does so within the time given him to answer. If he seeks to file one out of time he must get leave of the court, just as he must in such case get leave to answer. Either answer or cross-bill is an "irregularity," (2 Wall. 303,) if out of time. And that is all, it is submitted, that this court decided or meant to decide.

The answer, be it observed, as well as the cross-bill, were in the *name of the company*—out of time; and the rules applied were exactly as if the company answered out of time on leave, but did not get leave to file a cross-bill, though they asked for it.

Emphasis is given in 3 Wall. 285–6, to the fact that Rockwell intervened after the time within which the company should answer—and that the leave to defend was to the same extent as the company could, under the rules and practice of the court.

Borcherling, admitted defendant May 25th, 1878, filed that day his answer, (Record, fol. 111,) and May 31st, 1878, (Record, fol. 128,) his cross-bill.

It is sufficient to show the propriety, and, indeed, the necessity of this bill, that the court felt bound, in its final decree, to reserve the rights of Mr. Borcherling, the receiver, and of his *cestui que trust*, Mrs. Close.

The practice as to cross-bills would seem to be elemental law. The cross-bill is a defence, and therefore generally the right of the defendant. It is a necessity for obtaining positive relief, and therefore still more favored. The filing will often be directed by the court, in order that the distinctive and characteristic advantages sought by equity jurisdiction, the giving complete relief, and the settlement of controversy between all parties, may be obtained. It should be filed with or soon after the answer, and before issue joined by the filing of a replication. And, ordinarily, the penalty for not doing this is, that the proceedings do not stay.

In no court of equity with which I am acquainted is it a rule that before making defence by cross-bill leave must be given, if such defence be made in time.

The law respecting cross-bills and the time and regulations of filing them, will be found reviewed in

Irving *v.* De Kay, 10 Paige 322.
Miller *v.* Gregory, 1 C. E. Gr. 274.

Scott *v.* Lalor, 3 C. E. Gr. 301.
Allen *v.* Roll, 10 C. E. Gr. 163.
Williams *v.* Carle, 2 Stockt. 543.
Brinkerhoff *v.* Franklin, 6 C. E. Gr. 334.
Huber *v.* Diebold, 10 C. E. Gr. 170.
Stevens *v.* Stevens, 9 C. E. Gr. 77.
Vanderveer *v.* Holcomb, 6 C. E. Gr. 105.
Whyte *v.* Arthur, 2 C. E. Gr. 521.
2 Daniell's Practice, Ch. XXXIV.
Story's Equity Pleading, §§ 395–399.

To take it from the files, it is submitted, was not within the power of the court. It might be disregarded in that suit, but it was an original bill, praying relief. There was no charge of impertinence or contempt. The court was bound to hear, award its process, and determine the controversy raised.

For that reason, no advantage was taken of the "leave to the said Borcherling to apply for leave to file a cross-bill as he may be advised."

The appellant had no relief except this appeal, without submitting to an order, which, it seemed to his counsel, infringed the rights of the citizen. And for this appeal he had to wait till final judgment rendered.

The court below erred again in denying the motion of the appellant for an injunction, and for the appointment of a receiver *pendente lite*.

The case made by the bill and its appendices was this—

Joseph B. Close was the confessed owner of the title to thirty acres of land used for a public cemetery.

The Glenwood Cemetery, a public corporation, claimed this ground as really held in trust for them.

Their charter called for the issue of stock in $100,000, to be divided among the proprietors of the grounds, (see 1 Record, fol. 14,) according to their respective interests, and transferable in such manner as the by-laws may direct. (See 2 Record, fol. 15.)

The exemplified decree of New Jersey chancery, with a copy of its execution, its supplemental order for alimony, and the assignment made by him in conformity therewith, were appendices to this bill, and under its command, vested in the appellant all usufruct of this property, whatever its nature, and the rights of possession thereof, in order to the attainment of such usufruct.

Close was in possession, denying the right of the Glenwood Cemetery, and repudiating the judgment to which he was a party, and the deed of assignment which he had sealed.

There were profits from the sale of burial lots. Could he take them as against the appellant? His right was concluded by the decree and by his assignment of them.

The Glenwood Cemetery did not resist this application, they consented to it.

Their great object was to oust Close, who denied the acceptance of their charter and repudiated the dedication asserted.

He denied their title, How could they get possession until the court adjudicated in its favor?

But he could not deny Borcherling's title. He was estopped by record, and by his seal.

If Close's right was only to stock in the cemetery compan company not then seeking possession, the assignment vested this Borcherling, and he had a right to turn Close out that he mig stock valuable to his trust.

If his right was to hold the land even against the cemetery c the assignment vested the rents and profits in Mr. Borcherling entitled to the possession to secure them.

Until the cemetery company sought possession, and while Cl there, surely Mr. Borcherling only had right to possession a Close taking the profits.

The judgment was entitled to the same faith and credit in Wa it had in New Jersey. Could Close, in New Jersey, have he against it, and against the assignment founded upon it? Ho the Court of Chancery have delayed its mandate for possession

This has been a serious matter to Mrs. Close. For four been starving, notwithstanding all the sales of burial lots in this has actually been without one cent paid her by her husband. entirely without private means.

It is submitted that this decision of the court below was wr this court, by its advisory decree, should right it.

II. III.

If the cross-bill is restored, all proceedings subsequent to it from the files are erroneous. The decree falls, unless under-di it be amended. And the grounds in controversy should be pu of a receiver, with directions to carry on the business of selli for Mr. Borcherling's benefit, after due attention to the pub Close should be enjoined as prayed.

IV.

But the right of Mr. Borcherling to this protection and reli involves now the same points settled by the decree, viz.:

1. Was this land of Joseph B. Close held in trust for burial yea, how much of it?

2. Did the act of 1854 create the corporation complainant, zation necessary to complete its intent?

3. The true construction and effect of the amendatory act o validity and application to the rights of the appellant, Borcherl

V.

As to the Dedication.

The land in question lay in two distinct tracts—one of th other of sixty.

The thirty-acre tract was laid out into lots for burial; was fe graded; avenues and walks were laid out through it; everythi cemeteries was done to attract its public use as a burial grou

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because the property was thought or even asserted to be intended
tery, that is nothing. Close can change his mind and pay his ta

We pass to the next question—the effect of the act of 1854—
a corporation? Or was organization and acceptance necessary?
Undoubtedly, the corporation existed, *eo instante* that the act b
Section first says, after mentioning twelve persons by name, t
their successors are hereby created a body politic and corporate,
and title of the "Proprietors of the Glenwood Cemetery, in th
Columbia."
It provides a board of managers, until an election, by name. (S
Was further organization needed?
It *was* accepted by the "proprietors." The giving of deeds in
the corporation by Close, acting as president, concludes that
corporation exercised its franchises—all of them. Close treat
conveyed as belonging to the corporation. It does not lie in
deny its existence.
He was president, Humphreys was treasurer, G. D. Humphre
Clendenin, superintendent. The four managers constituted b
congress were announced to the public.
The law requires no technical act to signify acceptance of a ch
acts as those proved in the cause are more than sufficient.
The act of 1877 now demands attention.
Congress had reserved power to alter, modify or repeal the
And most of what was done in exercise of that power was cer
ceptionable. They changed the name of the corporation; t
a different board of governors, called them "trustees" instead o
established time and place for their election; protected the ri
by making its disturbance penal; provided for officers, to wit,
secretary, treasurer and superintendent. Of these changes no
pute the validity.
But the fifth and sixth sections of the amendatory act sugge
questions.
Section sixth. (Record, fol. 43,) says, that from the receipts fro
lots, hereafter sold, of the ground now dedicated for burial pu
shall be paid on the first Monday in June of each year, by t
trustees, to the original proprietors, one-fourth of the gross rec
from such sales, the remainder to be devoted to the improvemen
tenance of the cemetery.
Section fifth provides that the words "the proprietors," wherev
in the original act, "shall signify the proprietors of the lots in sa

By section fifth, the franchise, which had belonged to the p
the land intended for the cemetery, (fol. 15,) who were to b
holders, (Sec. 3,) and to have a vote for each share, was veste
prietors of lots sold, and all right therein belonging to the shar
annulled.
By section sixth the profits belonging to stockholders or propri
from the sale of burial lots, were interfered with. A certain
taken and ordered to be devoted to the improvement and mainte
cemetery, the rest (one-fourth) to the "original proprietors"—t
we suppose, to the owners of the land dedicated.

tle wonder that this act did not receive the signature of the
t would have been better had that signature been expressly
he act vetoed.
ainly involves that serious question, once and again raised in our
l jurisprudence, whether the government of the United States
power to take private property for private use—to take the
A and give it directly to B.
h distinctly raises this question. Franchise is property. The
rolling a corporation is valuable property. This right most evi-
ged to the stockholders in this corporation. Most dexterously
ry act declares that the word "proprietors" means "proprie-
and ignores the existence of any stock or any shareholder.
of congress must extend to changing the meaning of language
pretation can be given.
n sixth raises the question likewise. The stockholders had a
to the proceeds of the sales of burial lots, to be used as they
ngress says no, you shall devote three-quarters to the improve-
aintenance of the cemetery; one-quarter you may take your-
e as you like.

hat it is not requisite, in construing this act, to hold that the
is forbidden, or the right to have it, repealed. But its value is
not manage or control the franchise. It can get no pecuniary
still it involves liability for every dollar the corporation owes.
is imposed by section thirteenth (fol. 17), and it is not repealed.
conscionable and tyrannical act was never passed by any legis-

on is, will this court hold those provisions valid?

as, by the constitution, the right of exclusive legislation in the

ll legislatures, supreme, except so far as restricted by the instru-

y republican government the right to take property from one
another?
law is, in its nature, a contract," says Chief Justice Marshall,
ute rights have vested under that contract, a repeal of the law
those rights; and the act of annulling them, if legitimate, is ren-
power applicable to the case of every individual in the com-

ell be doubted whether the nature of society and of government
ent some limits to the legislative power; and if any be pre-
e are they to be found, if the property of an individual, fairly and
ired, may be seized without compensation?
egislature all legislative power is granted; but the question
ct of transferring the property of an individual to the public
re of the legislative power, is well worthy of serious reflection.
peculiar province of the legislature to prescribe general rules for
nt of society; the application of these rules to individuals in
seem to be the duty of other departments. How far the power
land may involve every other power, in cases where the consti-
t, never has been, and perhaps never can be, definitely stated.

"The validity of this rescinding act (of Georgia) might well
were Georgia a single sovereign power."

The court will recognize the decision in the early case of Flet
6 Cranch 135.

Judge Johnson, in that case, scorned to put it on the const
striction of the right of a state to invalidate contracts. He open
with the declaration—"I do not hesitate to declare that a state
sess the power of revoking its own grants. But I do it on a gene
the reason and nature of things—a principle which will impose
the Deity."

These "doubts" of Chief Justice Marshall and undoubting
compeers, have been shared by Kent and Story, and expressed i
mentaries.

1 Kent 382.

Story on the Constitution, § 1344.

Chief Justice Chase, in the Legal Tender cases, (12 Wall. 581)
citation made with approval. And Mr. Justice Strong, in the o
court, with evident care avoids saying that a law could be val
rectly annulled a contract or divested property, and which, at th
was not distinctly authorized by the constitution, as in the case
rupt law.

See in connection with this—

Terratt *v.* Taylor, 9 Cranch 43.

Town of Paulett *v.* Clark, 9 Cranch 335.

People *v.* Platt, 17 Johns. 195.

Wabash Co. *v.* Beers, 2 Black 448.

Dartmouth College *v.* Woodward, 4 Wheat. 629.

While these cases and many others are based upon the restrict
the constitution, there runs through the opinions delivered th
idea that a republican state cannot break its own contract, and
use take, resume or transfer private property.

If the legal tender question involved any such thing as the
private right through the abrogation of a contract, which, for
believe, it was a divesting *pro bono publico*. But the case pr
raises distinctly the point, has congress the right to take A's
give it to B?

And it is a forcible argument that it could never have been
give this right to congress when so much care was taken to in
passing a bill of attainder.

Says Marshall (6 Cranch 138): "A bill of attainder may affe
an individual *or confiscate his property*, or may do both.

"In this form the power of the legislature over the lives an
individuals, is expressly restrained. What motive, then, for
words which import a general prohibition to impair the oblig
tracts, an exception in favor of the right to impair the obliga
contracts into which the state may enter?"

If the people meant to restrain the federal legislature from p
of laws, historically tyrannical, whose sole evil might be the c
property, even when its motive might be righteous indignati
did they not mean, likewise, to interdict that tyranny, when the
only be the wantonness of power?

a natural right, as is likewise security of person. Forms of
are surrenders of the natural right of self-protection, in order to
ty. Power in the legislature to violate the security either of
f person, is implied when it is for the public good. But is it
no public use is pretended? and when the legislature says
will take back what we have given," or, "we will take from one
another?"

itted, on the whole case—

ing the appellant Borcherling's cross-bill from the files, the court

sing his petition for injunction against Close continuing after
ent by him to take the profits of the cemetery; and his further
a receiver in order to their enjoyment, the court erred.

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this court.

ereupon the court below should be directed to grant such in-
Mr. Borcherling, or a receiver for, into possession, decree Close
veyance of thirty acres to the cemetery association, decree the
o issue $100,000 stock, and that it be assigned to Borcherling as
t an account be taken of all receipts since 1877, the net profits
r maintenance of the cemetery to be paid to Mr. Borcherling,
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fall upon the appellees.

CORTLANDT PARKER,
W. D. DAVIDGE,
Of Counsel for Borcherling, appellant.

Supreme Court of the United States.

OCTOBER TERM, 1882.

J. B. CLOSE AND OTHERS, *Appellants*,
vs.
THE GLENWOOD CEMETERY, *Appellees*.
No. 108.

BRIEF OF

T. W. BARTLEY AND OTHERS,

Attorneys for Appellees.

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17-466

OFFICE SUPREME COURT, U.S.
FILED
NOV 22 1882
JAMES H. McKENNEY, Clerk.

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BRIEF OF

T. W. BARTLEY AND OTHERS,

Attorneys for Appellees.

This case is on appeal from the judgment of the Supreme Court of the District of Columbia.

The appellee had filed a bill in equity to enjoin the appellants from disturbance and interference in the lawful exercise of its rights as a Cemetery company. The relief was granted, and the equitable rights of the parties adjusted by the decree of the court below, under the act of Congress amending the charter.

The Cemetery company was incorporated by statute of July 27th, 1854. U. S. Statutes at L., v. 10, p. 789.

The 12th section of the charter is as follows :

"And be it further enacted, *That it may be lawful for Congress hereafter to alter, modify or repeal the foregoing act.*"

In February, 1877, Congress passed the act amending the charter. U. S. S. at L., v. 19, p.

The object of the amendment of the charter was to give the lot proprietors a voice in the management of the Cemetery. The entire control of the Cemetery by non-

residents, who had no interest in it save that of making money out of it, had been very unsatisfactory, and did not secure confidence in it as a safe resting place for the dead. Hence the amendment changing the mode of selecting the managers or trustees clothed by the terms of original charter with the authority to direct and control the administration of the affairs of the Cemetery.

The amendatory act expressly provides, that:

"The affairs of the Cemetery shall be so conducted under the authority of the board of trustees as to secure the equitable rights of each and every person having *in any way any vested interest* in the said Cemetery. And the company shall be amenable and subject to the jurisdiction of the equity courts of the District of Columbia for any disregard of the rights or interests of any person whatsoever."

Thus in direct and express terms the amendatory law has provided for the protection of all rights and interests of both the original proprietors of the ground, and the lot proprietors.

There certainly can be no substantial ground upon which the constitutional validity of this amendment to the charter can be questioned. But it is claimed, that the rights of property of the original proprietor or proprietors have been improperly and unlawfully interfered with. How is this?

The record shows that, in July, 1854, the appellants, residing in the vicinity of New York city, engaged in the enterprise of establishing a cemetery as a public institution for the burial of the dead, at or near Washington city in the District of Columbia. In pursuance of this undertaking, the appellant, Wm. S. Humphreys, came over to Washington, and selected and purchased the tract of land *for the purposes of a cemetery* which constitutes the grounds of Glenwood Cemetery now in question. The legal title in the land was conveyed to Humphreys, who

took possession of it, and commenced improving it for the purposes of a Cemetery. In furtherance of these objects application was made to Congress for a charter, and the act of the 27th July, 1854, incorporating the proprietors of Glenwood Cemetery, was passed. And on the 2d day of August, 1854, after a public notice and invitation to the President, heads of the Departments, and the citizens generally to attend, the ceremonies of a public dedication of the grounds, consisting of 90 acres, 30 of which had been already laid out into lots, and to be ready for interments, was made in due form and by public announcement in the presence of a large assembly of people. In consummation of those proceedings the appellants published a pamphlet, setting out the act of incorporation and the organization of the company under it, with the names of the officers, managers, superintendent, &c., together with the rules and regulations of the Cemetery, adopted by the authorities of the company; the very *first* of which is in the words following, to wit: "*All lots shall be held in pursunnce of 'An act to incorporate the proprietors of Glenwood Cemetery*," &c., "and shall be used for purposes of sepulture alone." This pamphlet was published to the world at large, and a copy of it given to each lot owner with his deed for his lot.

By means of the dedication of the land to the purposes of the Cemetery a change was effectuated in the rights and interests of the original proprietors. The Cemetery company became thereby clothed with the possession and use of the land for cemetery purposes; and the right and interests of the original proprietors became changed into a right to have and receive the proceeds of the sales of the burial lots less the expenses of the Cemetery. In other words, while the interests of the proprietors were greatly enhanced by the appropriation of the land to cemetery purposes, it became burdened with the necessary and

proper expenses of improving and maintaining the Cemetery as a permanent institution. And the lot owners became entitled to the use of their lots respectively for burial purposes, &c., together with the appurtenances including their location and connection with their surroundings or the rest of the Cemetery grounds. The *dedication* was a formal voluntary act and appropriation on the part of the original proprietor or proprietors to a specific use, and for purposes of gain ; and the law impresses upon the property the relative legal rights and interests of the parties or owners, with the incidents thereto.

It appears in the evidence that the land was purchased for the purposes of the Cemetery at $100 per acre ; and that by converting it into a Cemetery, and selling the lots at the prices fixed, it produced about $8,000 per acre. The original proprietors did not prescribe, either in the terms of the dedication or in the terms of sales of the lots, nor in the rules and regulations, the amount of the proceeds which should be appropriated to improve and maintain the Cemetery, or the amount which should be paid over to them as their royalty on the land. So that this was left as a matter for subsequent agreement, or equitable adjustment between the lot owners and the original proprietors.

And the lot proprietors, in their application to Congsess for the amendment of the charter, left this matter where it had been left before by the original proprietors themselves. And in this form the bill passed the House of Representatives. But the original proprietors, in their strenuous opposition to the amendment, urged that their interest or royalty in the land was in danger of being sacrificed ; and that the equity court in the District of Columbia might not allow them over the one-tenth, or even the one-sixteenth part of the gross proceeds of the sales of the lots. To this the reply was made that they should

not have sought the District of Columbia as the place for their speculation in the graves of the dead, if they were unwilling to trust the courts there for the administration of justice. In view of this opposition to the amendment the Senate amended the House Bill, and provided in express terms, that "the board of trustees shall pay to the original proprietors the one-fourth of *the gross receipts* arising from the sale of lots," &c.

The one-fourth of the gross proceeds would amount to about two thousand dollars per acre. And the one-sixteenth of the *gross receipts* would be about five hundred dollars per acre, which paid to these proprietors would certainly give ample profits on a graveyard investment, which cost them only one hundred dollars per acre; and more especially in view of the fact that the whole income from the sales of the lots was chargeable with the expenses of improving and maintaining the Cemetery and grounds *in proper style*, not only for the time being, but also for all time to come, even after all the lots shall have been sold out.

The power to amend the charter having been expressly reserved, and the investment under the charter having been made on *its terms and conditions*, Congress determined to secure the original proprietors in their interests or royalty in the land, and hence the provision requiring the one-fourth of the gross receipts to be paid to them, leaving the balance for improving and maintaining the Cemetery.

The original proprietors vigorously and strenuously opposed the passage of the amendment of the charter through two several sessions of Congress. But afterwards, when a reorganization of the company was about to take place under the amendatory law, a new light fell upon their vision. Although the charter had been obtained on an application to Congress for the benefit and purposes of the Cemetery, and although the dedication of

the grounds had been publicly made and proclaimed in the terms and under the authority of this act of incorporation, and although the business and affairs of the cemetery had been conducted and administered, and the books thereof kept by them as a corporation, and in the corporate name, for more than twenty years, they discovered, all at once, that the charter was of no validity, *had* never been accepted, no organization ever made under it, and that the Cemetery lots and grounds were the *mere and sole private property* of the appellant, J. B. Close! That the pretence of the incorporation, the public dedication of the grounds, and the deeds for lots executed by J. B. Close as president of the company, under the corporate seal, on which they had confessedly collected from the public over $160,000—all amounted to nothing! That Close had the right to convert the Cemetery gounds into a cornfield or a potato patch at his option! But in the plenitude of his magnanimity and generosity he was willing to make conveyances to the lot owners *individually for their naked lots, without the appurtenances, or any obligation* to keep up and maintain the Cemetery! After gaining the public confidence and collecting a large amount of money upon false pretences, kept up through more than twenty years of time, the appellant Close repudiated his plighted faith, but becomes so magnanimous and generous to the victims of his fraudulent contrivances, that, after a general conveyance of the land to his son, he proposed to make conveyances to them for their lots!

If the appellants stood now at the bar of the criminal court on an indictment for obtaining money under false pretences, what defence could be set up in their behalf? The ground assumed by them in this case admits their guilt of the criminal charge. In their defense here they virtually say, it is true that we obtained the act of incorporation, and published to the world an organization under the charter; it is true that we made the public

dedication of the Cemetery grounds, and made deeds of conveyances for the lots under the pretended seal and authority of the corporation, and carried on the Cemetery for twenty years and more under the forms and appearance of an incorporated company ; and it is true, that by these means we deceived the public and obtained large amounts of money. But these appearances and pretences whereby we obtained the money were *false* and *deceptive*, and we ask here now in this court of equity to be restored to our rights in the land as they stood before the dedication, and before the act of incorporation. This is in substance and plain language the effect of the defense in this case, permit me to say, with all due deference to the learned counsel on the other side. It is virtually a plea of guilty to the charges of fraud alleged in the bill. On an indictment for obtaining property under false pretences, the only conceivable defense which could be made for them would be, that they are and would be held estopped in the civil courts to set up their own fraud, and the falsity of their own pretences whereby they had deceived and imposed on a whole community. This defense to the indictment would rest solely upon the ground that by means of the estoppel their acts became valid and binding in law.

The several grounds of defense set up and urged appear to be as follows :

1st. That the charter of the company was not accepted:

2d. That there was no organization under the act of incorporation :

3d. That there was no dedication of the grounds under the charter, or to the purposes of the Cemetery corporation.

Of these, in their order,

1st. As a general thing *the acceptance of a corporate franchise is shown by, and* IMPLIED *from*, the exercise of the corporate powers, and by corporate acts. If the charter im-

poses no particular mode of expressing acceptance, the fact that the corporate body has acted under it evinces sufficiently that the charter was accepted. Angell & Ames on Corp. (p. 65, Sec. 83,) say: "It is not indispensable to show a written instrument, or *even a vote of acceptance;* and there may be many instances in which an acceptance can be inferred. (Bank of U. S. *vs.* Dandridge, 12 Wheat., 71.) An acceptance of charter, at least, for some purposes, may always be inferred from the exercise of corporate powers under it."

Again, on same page of Angell & Ames, in Note 6, "The production of a charter with proof of acts of user under it, *is sufficient to establish corporate existence*, where the charter confers corporate capacity and powers *in præsenti*, and unconditionally, and does not make the right to their exercise depend upon anything to be done *in futuro*," (cases cited.)

The books kept by the company, at the time, no doubt show the acceptance of the charter. These books are in the possession of the appellants, and they have been ordered by the equity court to produce them, but have thus far evaded the order. It is a rule of evidence that where testimony in the possession of a party is withheld, the legal presumption arises that it would be against him if produced.

But the appellants, having proclaimed to the world their action under the charter, and having continuously performed corporate acts under it for more than twenty years, and having induced the public and numerous parties to rely on the good faith of their pretences, and to pay them money on that account, are estopped to deny their acceptance of the charter.

2d. The organization under the charter is denied, and controverted by the appellants, who have in their possession, or within their control, the books of the company

showing what was done at the time, but refuse to produce them, even under the order of the court.

The contumacy of the appellants in their refusal to produce the books raises a conclusive presumption against them, that the books show not only the acceptance of the charter, but also the organization of the company under it. It is vain for the appellants to try to escape from the legal presumption against them by a resort to parol testimony on this matter, while they refuse to produce the books within their possession or control, which must show authentically all about these matters.

One of the primary modes of proving the existence of a corporation under a charter, is the production of its books showing its organic proceedings and corporate acts. It is well settled, that where the books of the company show that the business was conducted in the name, and under the authority of an act of incorporation, that fact is conclusive proof of the acceptance of the charter and an organization under it. Buncombe T. Co. *vs.* McCarson, 1 Dev. & B., 306; Angell & A. on Corp., p. 66, note 6. The appellants, therefore, while suppressing and concealing the books, which show in whose name and under what authority the company was doing business, cannot be allowed to insist upon showing by oral testimony, that the company was not acting as a corporation.

It has been adjudged in numerous cases, that the production of an act of incorporation, and the actual use of the powers and privileges given by that act, furnish, in the absence of an authenticated record of organization, sufficient ground to justify all further inferences as to the organization of the corporation. Narragansett Bank *vs.* Atlantic Silk Co., 3 Met., 282; Angell & A. on Corp., 66, note 6, and cases cited; Zabriskie *vs.* Cleveland, &c., Railw. Co., 23 How., 381; also, 47 Maine R., 34. If the law (that is, the act of incorporation) exists, and the corporate record shows *an attempt to organize* the corporation under

it, a very slight evidence of user beyond this is all that can be required. (Methodist Epis. Church *vs.* Pickett, 19 N. Y. Reports, 482.)

If there has been a user of a corporate franchise by an association of persons, their existence as a corporation can only be inquired into by the Government. A person doing business with a bank, as a corporation, cannot deny its corporate existence. And *a fortiori* persons doing business as an incorporated company, and holding themselves out to the world as such, cannot be allowed to deny the corporate existence. "And the *omission of trustees* by the act of incorporation of an insurance company, *to organize it could not be objected to by a contracting party, and much less by the persons acting as and for the company itself;* and any valid objection to the requisite organization could only be available in behalf of the Government." Angell & A. on Corp., pp. 71 & 72, and cases cited in Notes.

In Penobscot Broom Co. *vs* Samson, 16 Maine R., it was held, that where a statute incorporated A with associates, he may without associates exercise the franchise granted to him, and that his doing so is sufficient evidence of the acceptance of the charter, and the corporate existence.

After the continued exercise of the corporate powers for a time, the corporators are estopped to deny the existence of the corporation duly organized. (3 Met. R., 133.) More especially is this the case, where the rights of other parties have intervened, and investments have been made on the faith of the professions held out to the world of the due existence of a corporation by the continued exercise of its corporate powers. An estoppel here upon every reason and principle of the law arises, and the parties who have acquired the money or property of others by such public professions, are estopped to deny the due existence of the corporation. Bigelow on Estoppel (2d ed.), p. 492.

The law as stated above admits of a plain and certain

application to the facts of this case. The act of incorporation became a law on the 27th of July, 1854, in which Wm. S. Humphreys, who had purchased the land for the purpose of a cemetery, and was then in the actual possession of it, and his three chosen friends and associates, were made corporators and also the primary managers of the corporation. *Five days thereafter* the public ceremonies of the dedication of the grounds were performed in the presence of Wm. S. Humphreys, Clendenin and others. And immediately afterwards the printed pamphlet was published, and sent broadcast to the world, containing the act of incorporation, the ceremony of the dedication, and a statement of the organization of the company, and the names of the managers and officers thereof, together with the rules and regulations for the government of the Cemetery, &c.

They procured and adopted *a corporate seal* declaring the company incorporated under the said act of Congress. And under this organization and dedication, and these rules and regulations, the Cemetery went into operation as an incorporated company. The appellant, J. B. Close, one of the board of managers, was also the president of the company, and as such continued to act and execute deeds for lots under the seal of the corporation, until the charter was amended in 1877. Wm. S. Humphreys was one of the board of managers, and also acted as the treasurer. G. D. Humphreys acted as the secretary. And G. Clendenin was the superintendent, and as such continued to act from 1854 until 1878. The board of managers consisted of J. B. Close, Wm. S. Humphreys, Wm. Phelps and R. S. Evans. The deposition of Wm. Phelps has been taken in the defense, who testifies that he took no part as a manager, and knew nothing about it. But the remaining three managers, Close, Humphreys and Evans, making a majority of the board, did all that was required of them. The company did not become as large an affair as was an-

ticipated at the beginning. Wm. S. Humphrey broke up, and the interests of the original proprietors fell into the hands of J. B. Close alone. There was no demand for the stock in the company, and as the entire interest of the original proprietorship was in the hands of a single person, it became wholly unnecessary to issue the stock, which was authorized in the provisions of the charter. But the company was not abandoned or the corporation dissolved, but its affairs and the performance of its functions were left chiefly to the management of Clendenin, the superintendent, and J. B. Close, the president; the former of whom, *as agent for the corporation*, managed and superintended the affairs of the Cemetery, and the latter continued to execute deeds for lots in the name of the company and under the corporate seal, until the amendment of the charter in 1877. So that the Cemetery was actually conducted and managed by the corporation, and in the corporate name and by its authority for more than 22 years prior to the amendment of the charter.

3d. The dedication of the Cemetery grounds under the charter is denied and controverted. The facts stated above, which appear in the record, show a dedication to the purposes of this corporation *in express and direct terms*, and a continuation of the use under that dedication by the corporation for more than 22 years.

As to what constitutes a dedication, Kent in his Commentaries (Vol. 3, p. 450) says: "Dedication of land for public purposes, as for charitable and religious uses, and for public highways and village squares, enure as grants, and may be valid, without any specific grantee *in esse* at the time to whom the fee could be conveyed." Town of Pawlet *vs.* Clark, 9 Cranch, 292; City of Cincinnati *vs.* White, 6 Peters, 431; Brown *vs.* Manning, 6 Ohio, 303.

Kent further says, (p. 454): "The true principle, to be deduced from the authorities, I apprehend to be, that if

there be no other evidence of a grant or dedication than the presumption arising from the fact of acquiescence on the part of the owner in the free use and enjoyment of the way as a public road, the period of twenty years, applicable to incorporeal rights, would be required, as being the usual and analogous period of limitation. But if there were clear, unequivocal and decisive acts of the owner, amounting to an explicit manifestation of his will to make a permanent abandonment and dedication of the land, those acts would be sufficient to establish the dedication within any intermediate period, and *without any deed or other writing.*"

The doctrine of the dedication of easements to the public use is said to be of comparatively modern date, but it is now adopted as a part of the common law both in England and in this country. (Washburn on Easements, pp. 131 and 132.) The same author says, on page 136: "By the civil law, if a thing was dedicated to sacred and religious uses, it ceased to belong to individuals, and a piece of ground became such by depositing within it a dead human body; and this conforms in some measure with the common law." And again, on p. 137, he adds: "At common law it has been held, that there may be a dedication to public and pious uses, such as glebe land, or land for the erection of a church, for the use of a non-existing church, or for purposes of burial of the dead." Beatty *vs.* Kurtz, 2 Peters, 556 and 583. * * * "It is not necessary, in order to effectuate a dedication, *that the owner of the land dedicated should part with the fee of the same.*"

Again, on pages 138 and 139, Washburn adds: "*A valid dedication may be made by a single act, if positive and unequivocal in its nature, and especially where purchases have been made upon the faith that the act was meant to induce.* To constitute a public use, it is not necessary that the public at large, that is, all persons without distinction, shall be

able or be entitled to share in its advantages, but it is sufficient that its advantages are meant to be shared, and may be shared, by the inhabitants, or a portion of the inhabitants, of a city, town or village, or other locality." * * * "To constitute a dedication requires, however, no grant or conveyance by deed or writing, on the part of the owner of the land. If he shall do such acts *in pais* as amount to a dedication, the law regards him as estopped *in pais* from denying that the public have a right to enjoy what is dedicated, or from revoking what he had thus declared by his acts." * * * "And a dedication when once made to, and accepted by, the public, *is in its nature irrevocable.*"

The doctrine of the dedication of land to public uses, so far as applicable to this case, is thus fully set out, because the grounds taken by the appellants in a great measure ignore the law as here cited. The two elementary authors, Kent and Washburn, on this subject are amply sustained by the reported cases both in England and in this country. (See Smith's Leading Cases, with Hare & Wallace's Notes, vol. 2, pp. 208, 209, 211, 222, 224. And as to the estoppel both at law and in equity in such case, see pages 619, 642, 643 and 652. Bigelow on Estoppel, p. 492.

The dedication of the land, in this case, to the purposes of the Cemetery, is shown by acts of the owner most "*clear, unequivocal and positive,*" and publicly declared to the world, not only on the Cemetery grounds at the time, but also in a printed pamphlet published and sent out and circulated continuously for over twenty years. Wm. S. Humphreys was the owner of the land, and in the possession of it at the time. He obtained the act of incorporation from Congress; and immediately afterwards he had and procured the public declaration and ceremony of the dedication of the land to be made, on the grounds himself, and in his own presence. It was his own voluntary

act. He procured the public notice of the dedication to be made in the newspapers, invited the ministers of the Gospel to assist him in the solemn ceremonies, and requested the public at large to be present and witness his *unequivocal* and *positive* act of dedication. The whole ceremony of the dedication was his own act, procured by him to be done, and publicly proclaimed to the world in his presence, and by his authority. But he did not stop here. He procured the publication of the pamphlet, made (Exhibit A) in the bill, proclaiming the Cemetery Company to be incorporated, and that the title to the Cemetery lots would be held in pursuance of the said act of incorporation therein contained. He procured the superintendent, Clendenin, to circulate the pamphlet, and give it to every lot purchaser for twenty years and more. The appellant, J. B. Close, was made the president of the Cemetery, and *as such acted*, executed deeds for lots, and ratified all that Humphreys had done. Subsequently Close became the sole owner of the land, and continued his ratification of the dedication, and all of Humphreys' acts in this regard down until the year 1877.

On the faith of this dedication and these public professions, some two thousand lots in the Cemetery have been sold, and a large amount of money expended on them by the lot proprietors, during the last twenty-two years. And now, here in a court of equity, what do the appellants propose? Do they propose to refund the $160,000 which they have collected from the lot owners? It is a familiar rule, that a party must do equity to others, before he can ask equitable relief against them. The appellants now seek to repudiate the dedication, to repudiate the act of incorporation, to repudiate all their public professions and pretences whereby they have collected a large amount of money. They ask to be allowed to keep their ill-gotten gains, and to have the Cemetery grounds, lots sold and all, to be declared to be the mere private prop-

erty of J. B. Close. In other words, the appellants invoke the aid of this court to enable them to consummate and effectuate a stupendous fraud upon a whole community. What kind of a figure do the appellants cut in a court of equity in attempting such a demand?

According to the law as given above from high authority, a dedication of land to a public or charitable use may be made by a single act of the owner, which is clear, unequivocal and positive in its nature. Three things are said to be requisite to constitute the dedication. 1st. The act must amount to a distinct declaration of the appropriation. 2d. It must be a clear manifestation of the intention of the owner to make the dedication. 3d. And the dedication must be accepted by the public or beneficiary of the dedication. With each of these three requisites the dedication becomes binding and irrevocable forever.

Apply this test to the act of dedication under consideration. On the 2d day of August, 1854, Wm. S. Humphreys, the owner of the tract of land consisting of ninety acres, which he had purchased for a cemetery, in the presence of hundreds of people invited there to be witnesses of the act, *publicly declared* in the most solemn manner, and with religious ceremonies, his dedication of the whole tract of ninety acres. There was no exception or reservation of any part of the ninety acres. In the notice inviting the public to be present, this descriptive language is used: "Glenwood Cemetery lies north of the capitol, distant one mile and a half, formerly the estate of Junius J. Boyle, Esq." (Record. p. 101.) The proof shows that this estate consisted of ninety acres. In the printed pamphlet, Exhibit A, the dedication was described and published by Humphreys himself in the following words, to wit: "DEDICATION. On Wednesday, August 2d, this interesting ceremony was performed *on the ground of the Cemetery* situated a mile and a half north of the capital." * *

"*The premises altogether comprise ninety acres, thirty of which are now fully prepared for interments.*" (See p. 11 of Record.) This is a distinct and unequivocal declaration of the dedication of the whole ninety acres, no exception or reservation of any part having been made. The public act of dedication distinctly and positively covers the whole tract.

Was *the intent* of the owner different? The act of incorporation conferred the power to "purchase and hold not exceeding one hundred acres of land," and provided that the Cemetery should consist of at least thirty acres. The charter makes a maximum of 100 acres and a minimum of 30 acres. The INTENTION of the owners to have the Cemetery consist of the whole ninety acres is shown by *numerous facts of a conclusive nature:*

1st. The whole tract was purchased by Wm. S. Humphreys for the *sole purpose of a cemetery,* and as such was in due form dedicated and appropriated as aforesaid, and subsequently appellant Close and his wife acquired their interests, which, of course, must be subordinate to the dedication and its uses.

2d. When the explicit declaration of the dedication, covering the whole tract of ninety acres was made, no words of exception or reservation were made.

3d. The Cemetery was described by the proprietors as consisting of ninety acres. When sales of lots were made, or offered to purchasers by Clendenin, Superintendent, the Cemetery was described as containing ninety acres, thirty of which were laid out into lots, and that the remaining sixty acres would be laid out as soon as they were needed for burial purposes, &c. Purchasers were induced to select lots near the northern line of the 30 acres, on Clendenin's representation, that the sixty acres constituted a part of the Cemetery, and when laid off into lots would make their lots in the centre of the Cemetery.

4th. The 6th Sec. of the Charter provides that "*the land*

of the company dedicated to the purposes of a cemetery shall not be subject to taxation of any kind." And the president of the company, J. B. Close, and Clendenin, the superintendent, by representations that the whole ninety acres had been dedicated to the Cemetery, were enable to hold the whole tract exempt from taxation for twenty years and more.

5th. The sixty acres not being needed for burial lots as yet, were used, however, for the purposes of the Cemetery Company, as a residence of the superintendent, and that use and its cultivation by him for the time being contributed to pay him for his services, and was not inconsistent with the purposes of the dedication.

6th. The whole ninety acres were accepted by the corporation as the dedication, and so held for 20 years and more. No offer was ever made to sell any part of it, but it was kept for the purposes of the Cemetery when it should be needed for burial purposes. The dedication became irrevocable. And the owners were estopped to deny the dedication of the whole ninety acres, after selling lots on the representation that the Cemetery consisted of the whole tract ; and also by the same representation, having the whole ninety acres exempted from taxation, on the terms of the charter, on the ground that it was dedicated to cemetery purposes. It was not essential that the ground be laid out into lots, and be actually prepared for interments in order to be dedicated. If it was all purchased for burial purposes and was dedicated and held for such purposes when needed, that was sufficient. In what plight do the appellants stand in having insisted on the dedication of the whole 90 acres, and thus had it exempted from taxation for 22 years, and then coming in here and repudiating that claim of dedication, and demanding 60 acres as not dedicated to the Cemetary ! Is such perversity to be countenanced in a court of equity ? Such conduct has not yet received the sanction of our courts.

As the appellants are estopped to deny the dedication of the whole tract, the complainant must be entitled to hold the same land under the amended charter, which was held for that purpose by the Cemetery Company originally.

A few remarks by way of reply to the arguments on the other side:

1st. The argument on behalf of the appellant, Close, wholly ignores and overlooks the doctrine of the law of easements and of dedications to public humane and charitable uses. Eleemosynary corporations are more or less coupled with trusts and religious and charitable uses, and the law governing them is tempered by considerations differing from the ordinary rules applicable to mere business corporations.

2d. The rule that adverse possession and continued and uninterrupted use for twenty-one years establishes a right and easement in real estate is here wholly ignored and disregarded. The Cemetery Corporation had the exclusive possession, use and occupation of these grounds for the purposes of the Cemetery for more than twenty-two years, with Close's knowledge and acquiescence, before he asserted his absurd claim that the grounds were his own private property.

3d. The issue of stock on a supposed estimate of value in the original proprietorship was authorised by the original charter, but that was not essential to the existence of the corporation and the exercise of its functions, and was a matter which the *proprietors in interest* could waive, and indeed was only practically useful where the original proprietors were numerous. And as there was no demand for the stock, and but one such proprietor, that provision was waived for the time being at least.

4th. If, after the lapse of a series of years, the members

of the corporation could take advantage of their own informalities and defects in their original organization of the company to evade responsibility in their transactions, there would be no end to the frauds which could thus be committed on the public.

5th. The rights and claim of Mrs. Close here are entirely subordinate to, and can be only asserted under the rights of the appellant Close himself.

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T. JESUP MILLER,
WM. F. MATTINGLY,
Atty's for Appellees.